

# Poverty, Islam, and Doha: *Unmet Challenges Facing American Trade Law*

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## I. Kicking the Can Down the Road

It may not be clear for some time, however, whether Doha has really set multilateral trade policy firmly back on track. . . .

Agreement was reached by dint of vague drafting compromises that often merely papered over divergent national interests. The consequence is a negotiating agenda riddled with ambiguity. Not surprisingly, government with directly conflicting objectives have proclaimed victory with equal conviction.<sup>1</sup>

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All WTO documents cited herein are available on the WTO Web site, [www.wto.org](http://www.wto.org). Unless otherwise noted, throughout I use the term "developing country" to encompass both "developing country" and "least developed country," which is a distinction made in international trade law. Without implying a pejorative implication, or the correctness of one development path, I also use commonly understood equivalent terms—"poor country," "underdeveloped country," and "Third World country."

1. Guy de Jonquières, *New Battles Loom After WTO Success at Doha*, FIN. TIMES (Survey: 2002 and Beyond), Feb. 1, 2002, at III.

## A. THE CONVENTIONAL WISDOM

This article questions the conventional wisdom on the recent and possibly seminal event in international trade law<sup>2</sup>—the Fourth Ministerial Conference of the World Trade Organization (WTO) held at Doha, Qatar from November 9–13, 2001. The conventional wisdom is that the Doha Conference was a “success.”<sup>3</sup> Because of two unmet challenges that concern the Third World and the Muslim World, the conventional wisdom may be wrong—or, at least, giddy.

The post-Doha squabble over who ought to serve as the Chairman of the Trade Negotiations Committee (TNC), which was established to handle the task of supervising the new trade round launched at the Conference, should have been a clue that all might not be well.<sup>4</sup> Some developed countries, like the United States, wanted the Director-General, Mike Moore, to serve as the TNC Chairman. Other WTO members, especially developing countries, preferred to select the Chairman from the ranks of trade ambassadors based in Geneva, apparently to better control the new round than if the Director-General were running matters. Hard feelings also remained after Doha. Some developing countries felt the Director-General had declined to push hard enough at Doha for a “development box” on their use of agricultural subsidies and on special tariff treatment for their exports. The likely result? A compromise whereby the Director-General-elect (who is Thailand’s Dr. Supachai Panitchpakdi, effective September 1, 2002) serves as Chairman *ex officio* and the TNC reports to the WTO’s General Council, which is member-driven and attended by Geneva-based trade ambassadors.<sup>5</sup>

This post-Doha clue about the accuracy of the conventional wisdom seems to have gone unnoticed amidst the euphoria immediately following, and continuing well after, the Conference. “This has been a hell of a good week for the WTO,” said the European Union’s (EU) Trade Commissioner<sup>6</sup>—after complaining repeatedly that, “We [the EU] have got nothing. We are the orphans of the WTO.”<sup>7</sup> The rosy conclusion about Doha is based not so much on the accession of China and Taiwan (though the end of their long road to membership certainly was good news), and certainly not on the waiver granted to African, Caribbean, and Pacific countries for receipt of preferential trade benefits from the EU, as on the agreement of an agenda for a new round of multilateral trade negotiations.<sup>8</sup> The sanguineness, urged by the WTO Director-General extends to developing countries, because the new round should benefit these countries.<sup>9</sup>

2. For an abridged, two-part version of the article, see Raj Bhala, *The Third World, The Muslim World, and the New Trade Round (Part One)*, 8 INT’L TRADE L. & REG. (2002) and *The Third World, The Muslim World, and the New Trade Round (Part Two)*, 8 INT’L TRADE L. & REG. (2002). For a modified single version, see Raj Bhala, *Challenges of Poverty and Islam Facing American Trade Law*, 17 ST. JOHN’S J. LEGAL COMMENT. (Symposium on “Globalization’s Impact on International Trade and Intellectual Property Law,” forthcoming 2002).

3. See, e.g., Moïses Naim, *Lessons from the Recent Past*, FIN. TIMES, Dec. 28, 2001, at 11 (writing that “the outcome of the WTO summit in Doha far exceeded expectations”); Michael Mann, *Fischler Hails Doha Meeting a Success*, FIN. TIMES, Nov. 16, 2001, at 7 (quoting Franz Fischler, European Union Agriculture Commissioner).

4. See Daniel Pruzin, *Zoellick Voices Support at WTO for Director-General as TNC Chair*, 19 INT’L TRADE REP. (BNA) No. 4, at 111–12 (Jan. 24, 2002).

5. See Daniel Pruzin, *WTO members Edge Toward Agreement on Chair to Head Doha Round Committee*, 19 INT’L TRADE REP. (BNA) No. 5, at 179–180 (Jan. 31, 2002).

6. Guy de Jonquières, *WTO Reaches Agreement to Launch New Trade Talks*, FIN. TIMES, Nov. 15, 2001, at 1.

7. Guy de Jonquières, *All-Night Hagglng in Doha Ends in Agreement*, FIN. TIMES, Nov. 15, 2001, at 6.

8. See, e.g., *Beyond Doha*, ECONOMIST, Nov. 17, 2001, at 11 (proclaiming “At least they struck a deal”).

So, while not every day in Doha went swimmingly,<sup>10</sup> the end result was a triumph—the “Doha Development Agenda” (DDA). The new round is scheduled to last three years, starting after the Fifth Ministerial Conference, in Mexico City in 2003 and ending January 1, 2005.

## B. THE DDA

The DDA includes a large number of items, most notably those listed below.<sup>11</sup> The negotiations on these items are to be conducted as a single undertaking; hence no accord in any sector will be final until agreement is reached on all issues.<sup>12</sup>

*Agricultural Subsidies:* Negotiations on “reductions of, with a view to phasing out, all forms of export subsidies” for farm products and “substantial reductions in trade-distorting domestic” support schemes, but “without prejudging the outcome” of these talks, while taking into account the need for Special and Differential (S & D) treatment for underdeveloped countries.<sup>13</sup>

*Industrial Products:* Negotiations to eliminate or reduce tariff and non-tariff barriers, including tariff spikes (i.e., peaks) on sensitive products like textiles, with attention to exports from poor countries. The reduction commitments need not be on a reciprocal basis, so as to allow for S & D treatment for Third World countries.<sup>14</sup>

*Services:* Continued negotiations on (1) market access for financial, telecommunication, and transport services, and (2) easing of immigration rules for employing workers on temporary contracts.

*Trade Remedies:* Negotiations on “clarifying and improving disciplines” on anti-dumping (AD) and countervailing duty (CVD) rules (including fishing subsidies) as set forth in the Uruguay Round Agreement on Implementation of Article VI of the GATT 1994 (the Anti-dumping Agreement) and the Agreement on Subsidies and Countervailing Measures (SCM Agreement), but concurrently “preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives.”<sup>15</sup> The meaning of *instruments* is not entirely clear though the American position appears to be that it refers to the trade remedy laws of the member countries (e.g., United States AD and CVD rules).<sup>16</sup> Moreover, during the negotiations, the United States is likely to insist on disciplines against dumping and illegal subsidization, as distinct from restraints on AD and CVD measures that combat these unfair trade practices.<sup>17</sup>

9. See *id.*

10. See, e.g., Guy de Jonquières & Frances Williams, *WTO Logjam Continues Over Trade Round Agenda*, FIN. TIMES, Nov. 12, 2001, at 6 (chronicling the disputes of the first few days of the Ministerial Conference).

11. The DDA is set forth in Ministerial Conference, Fourth Session, Doha, Draft Ministerial Declaration, WT/MIN(01)/DEC/W/1 (Nov. 14, 2001) [hereinafter Draft Ministerial Declaration]. Summaries of it are contained in Daniel Pruzin, *Trade Officials Assess Winners, Losers in Aftermath of Doha Ministerial Meeting*, 18 Int'l Trade Rep. (BNA) No. 46, at 1856 (Nov. 22, 2001); *Time to Trade*, WASH. TIMES, Nov. 21, 2001, at A16; Jonquières, *WTO Reaches Agreement*, *supra* note 6; Jonquières, *All-Night*, *supra* note 7; Mann, *supra* note 3; Daniel Pruzin & Gary G. Yerkey, *WTO member Nations Agree to Launch Development Round at Tough Talks in Doha*, 18 Int'l Trade Rep. (BNA) No. 45, at 1814 (Nov. 15, 2001); Frances Williams, *Declaration on Patent Rules Cheers Developing Nations*, FIN. TIMES, Nov. 15, 2001, at 6.

12. See Pruzin & Yerkey, *supra* note 11, at 1814.

13. Draft Ministerial Declaration, *supra* note 11, ¶¶ 13–14.

14. See Draft Ministerial Declaration, *supra* note 11, ¶ 16.

15. Draft Ministerial Declaration, *supra* note 11, ¶ 28.

16. See Pruzin, *Trade Officials Assess*, *supra* note 11, at 1856.

*Regional Trade Agreements:* Negotiations on "clarifying and improving disciplines and procedures" on customs unions and free trade areas.<sup>18</sup>

*Electronic Commerce:* Agreement to extend until the Fifth Ministerial Conference (2003) a ban (initially imposed at the Second Ministerial Conference in 1998) on imposing tariffs on certain kinds of electronic commerce.

*Intellectual Property:*<sup>19</sup> A Declaration that developing countries will be immune from challenge under the Uruguay Round Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) if they seek to obtain medical supplies via compulsory licensing in order to meet a public health crisis. The Declaration provides that "[t]he Trips agreement does not and should not prevent members from taking measures to protect public health," and should be understood and enforced in a way "supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all."<sup>20</sup>

*Geographic Indications:* Negotiations on the protection of geographical indications of certain foods (namely, cheese, ham, and rice) and on the establishment of a global system for registering and notifying geographical indications on wines and spirits, with the possibility of extending the system to cover other items (such as cheese, ham, and yogurt).

*S & D Treatment on Subsidies:*<sup>21</sup> Agreement on requests for extension of the phasing out period for export and import substitution subsidies under article 27.4 of the SCM Agreement.

*The Four "Singapore Issues": Investment, Competition Policy, Trade Facilitation (i.e., Simplifying Customs Procedures), and Transparency in Government Procurement.* Preparatory work to continue under WTO Working Groups established at the First Ministerial Conference in Singapore in 1996. Negotiations on the Singapore issues will not commence until after the Fifth Ministerial Conference in 2003 and only if there is an "explicit consensus" to begin them.<sup>22</sup> (Any member could take a position preventing the commencement; for example, an assurance sought at Doha by India and gained through a statement by the Conference Chairman, Qatar's Youssef Kamal.<sup>23</sup>) Such talks would deal with technical assistance for and capacity-building in developing countries, in order to assess the effects of alternative proposals.<sup>24</sup>

*Environment:* Negotiations on the (1) relationship between WTO obligations and multilateral environmental agreements (MEA) (e.g., between TRIPS and the U.N. Convention

17. See Gary G. Yerkey & Daniel Pruzin, *U.S. Makes Concession in WTO Agenda Talks on Clarifying Dumping, Subsidies Agreements*, 18 Int'l Trade Rep. (BNA) No. 45, at 1819 (Nov. 15, 2001).

18. Draft Ministerial Declaration, *supra* note 11, ¶ 29.

19. See Ministerial Conference, Fourth Session, Doha, Draft Declaration on the TRIPS Agreement and Public Health, WT/MIN(01)/DEC/W/2 (Nov. 14, 2001) [hereinafter TRIPS Draft Declaration]; Geoff Dyer, *Activists See Flaws in Drug Patent Proposal*, FIN. TIMES, Nov. 16, 2001, at 7.

20. Williams, *supra* note 11, at 1.

21. See, Committee on Subsidies and Countervailing Measures, *Proposed Procedures for Extensions Under Article 27.4 for Certain Developing Country members*, Communication from the Chairman of the General Council, G/SCM/W/471/Rev.1 (Nov. 13, 2001); Daniel Pruzin, *WTO Gets Applications from 18 Countries for Extended Deadline for Subsidy Phase-Out*, 19 Int'l Trade Rep. (BNA) No. 2, at 47 (Jan. 10, 2002).

22. See Draft Ministerial Declaration, *supra* note 11, ¶¶ 20, 23, 26; Pruzin, *Trade Officials Assess*, *supra* note 11, at 1857.

23. See Daniel Pruzin, *Moore Warns of "Difficult" Fifth Meeting of WTO in 2003 to Resolve Singapore Issues*, 18 Int'l Trade Rep. (BNA) No. 47, at 1895 (Nov. 29, 2001).

24. See Daniel Pruzin, *WTO Chief Outlines Budget Needs to Support Doha Development Agenda*, Int'l Trade Rep. (BNA) No. 47, at 1898-99 (Nov. 29, 2001).

on Biodiversity, or between various WTO obligations and the Cartagena bio-safety protocol for genetically-modified organisms), (2) information exchange between the WTO and MEA secretariats, and (3) reduction of trade barriers to environmentally-friendly goods and services. Possible negotiations, to be decided at the Fifth Ministerial Conference in 2003, on eco-labeling and other environmental matters.

### C. IS THE CONVENTIONAL WISDOM WRONG?

The DDA sounds impressive. But, is the conventional wisdom about it wrong?<sup>25</sup> Could it be that Doha was neither a success nor a monstrous failure? Perhaps what happened was procrastination hidden under the veil of the DDA, as the *Financial Times* suggested:

Few vital economic interests were at stake, or tangible commercial gains made, and no bargaining positions irretrievably surrendered.

The Doha talks will not directly affect the wealth of nations or prices paid by consumers. They were talks about whether to hold further talks on global trade liberalisation, and what their broad parameters and goals should be.

...[T]he sparring was largely intended to defend national pride, manage political perceptions and square lobbies and constituencies at home.<sup>26</sup>

The insinuation is reasonable. A careful read of the DDA list shows settlement of only two substantive trade law issues: (1) compulsory licensing of pharmaceuticals (a breakthrough credited to Brazil in its bilateral negotiations with the United States<sup>27</sup>), though not on imports of inexpensive copies of patented drugs and (2) S & D treatment under the SCM Agreement. Surely the intense future negotiations in agriculture, industry, services, and electronic commerce and the possible blockage of talks on the Singapore issues offset these resolutions.<sup>28</sup>

Indeed, starting in 2004, the chance of trade wars over agricultural export subsidies cannot be dismissed. The "peace clause" in the Uruguay Round Agreement on Agriculture ensures that export and domestic support subsidies conforming to the Agreement cannot be challenged as illegal.<sup>29</sup> But, the clause has a sunset date of December 31, 2003. Thereafter, cases brought under the Understanding on Rules and Procedures Governing the Settlement of Disputes (Dispute Settlement Understanding or DSU) can be initiated against these subsidies, the infamous examples of which are the EU's Common Agriculture Policy (CAP) and some American programs. The round launched at Doha is scheduled to

25. Viewed most charitably to the WTO, the facts can be set aside that some items (namely, agriculture and services) were part of the built-in agenda leftover from the Uruguay Round, and other items have been on the agenda since 1996 (i.e., the Singapore issues). Similarly, the Doha negotiators agreed to continue on-going work on improving and clarifying dispute settlement rules, with a target date of May 2003. See Pruzin & Yerkey, *supra* note 11, at 1817.

26. See Jonquières, *All-Night*, *supra* note 7.

27. See *id.*

28. Cognizant of the risk some developing countries might block negotiations on the Singapore issues, WTO Director-General Moore has written publicly of his belief that it is in the interests of developing countries to support these talks. He argues – quite plausibly – that investment rules would help attract FDI, competition rules would help break up cartels, transparency in procurement would help combat corruption, and trade facilitation rules would lower export costs. Guy de Jonquières, *Moore Speaks Out on WTO Rules*, *FIN. TIMES*, Feb. 18, 2002, at 5. See Mike Moore, *Development Needs More Than Trade*, *FIN. TIMES*, Feb. 18, 2002, at 15.

29. Peace clause, Uruguay Round Agreement on Agriculture.

finish one year after the peace clause expires, i.e., on January 1, 2005, and even that deadline already has been cast in doubt as "hopelessly optimistic,"<sup>30</sup> especially since the Uruguay Round took seven years, 1986–1993. Thus, the risk of agricultural trade wars is particularly high in 2004, assuming there is insufficient progress in the talks to eliminate the subsidies.

Unfortunately, the peace clause issue was hardly discussed at Doha. That raises the question of whether procrastination at Doha was inevitable. Arguably, it was, in no small part because the United States failed to meet two significant challenges in international trade law. Each failure stemmed from miscalculation wrought by inability to see the world trading system and its legal regime through the eyes of developing and Islamic countries. When the leading trade power on earth errs, dilly-dallying is not an occasion for rejoicing. Rather, it is—or ought to be—a stimulus for re-calculation. Since Doha, unfortunately, there has been little of that.

#### D. THE "POVERTY" AND "ISLAM" CHALLENGES

What were—and still are—those two unmet challenges? "Poverty" and "Islam." First, the United States did not build a consensus among developing countries for trade liberalization. That failure stemmed from its persistent under-estimation of the depth of suspicion in poor countries about the effects on them of trade liberalization under the WTO agreements reached during the Uruguay Round.

Second, the United States did not make a persuasive link between trade liberalization, on the one hand, and the enhancement of peace and stability through closer ties with Islamic countries, on the other hand. This failure reflected under-estimation of the potential contribution to national security (not only of the United States, but the entire industrialized world) from better integrating some of these countries into the global trading system.

Thus, the argument against the conventional wisdom is that the Doha Ministerial Conference was an exercise in temporizing. That disappointing result was ineluctable. Why? Because the WTO member to which all other members look for leadership had not addressed, and to some degree not even acknowledged the potency of, challenges involving the developing and Islamic worlds.

Metaphorically, what occurred at Doha was "the can was kicked down the road." The can is the body of substantive trade law issues. The delegations did the kicking. Among those who kicked with the biggest foot and the greatest force was the United States (though the European Union (EU) wore a large shoe too). The disposition of the can—lying there, as it is now, several yards down the street—is highly uncertain. The can could be kicked yet further down, it could be avoided entirely, or it could be picked up and disposed of, in the sense of the issues it metaphorically symbolizes could be resolved once and for all.

#### E. WHY THE BUOYANCY?

If it is premature to dub Doha successful, then why is the buoyant characterization of Doha the conventional wisdom? Perhaps the community of civilized nations needed a "feel-good" interpretation after the dreadful day, September 11. Perhaps the courageous—and they were brave—delegates voyaging to Doha with security threats needed to believe the

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30. Pruzin, *Trade Officials*, *supra* note 11, at 1858.

personal risks they took were not in vain. The answer also lies in the atmosphere on November 8, 2001. Were the expectations not low? If little or nothing was expected by way of agreement on a substantive agenda, then by that meaninglessly low threshold, of course Doha was a "success."

Conversely, inflated expectations must be disclaimed. WTO Ministerial Conferences would be wondrous affairs if they dealt conclusively with every trade law issue of the biennium. Because that is too much to ask of trade ministers—some of whom, in contrast to their deputies, are not programmed for detailed give-and-take sessions—in a week, agenda formulation is a necessary part of these Conferences. An agreement for future talk is, by definition, a possibility. But, the conventional wisdom sees lack of agreement on an agenda (as occurred after the Third Ministerial Conference in Seattle in 1999) as a melt down, and avoidance thereof as success. That risks acceptance of under-achievement, and this risk seems implicit in the post-Doha buoyancy of U.S. Trade Representative (USTR), Robert Zoellick: "We have removed the stain of Seattle."<sup>31</sup> Well, yes, thank God. But, if escaping a debacle is the best to expect, then the casualty will be more than just a balanced characterization of what really was achieved. It will be a candid admission of the issues at stake, and a push to meet them. Precisely that was the casualty of Doha.

#### F. THE ARGUMENT IN BRIEF

The argument is that at Doha, the can was kicked down the road. Why was it kicked? Essentially (but, of course, not entirely) because of twin failures: to address definitively discordant views from poor countries, and to weave Muslim countries into a cogent vision for national security. This argument proceeds in four sections.

Sections II and III lay out the trade law challenges not met by the United States, and the miscalculations that lay behind the failure to meet them. Section II discusses the challenge of forging a consensus for multilateral trade liberalization, unmet because of under-estimating hostility among developing countries toward freer trade. Section III deals with the challenge of associating trade liberalization with security enhancement, unmet because of under-estimating how trade relations with some Islamic countries might strengthen this link. Section IV concludes with points about empathy and humility.

## II. The Poverty Challenge

Eradication of mass poverty was the laudable and overarching objective of our leaders and thinkers, including Dadabhai Naoroji, Mahatma Gandhi, and Pandit Nehru . . . More than five decades after independence we are, alas, nowhere near achieving this objective.<sup>32</sup>

#### A. FOUR DDA FACTS

Perhaps developing countries, especially the least-developed countries, "did better [at Doha] than even they had expected"<sup>33</sup> in obtaining assurances that TRIPS patent provisions would not be used to block access via compulsory licensing to essential medical supplies,

31. Jonquières, *WTO Reaches*, *supra* note 6.

32. T.N. SRINIVASAN, EIGHT LECTURES ON INDIA'S ECONOMIC REFORMS xi (2000).

33. Jonquières, *All-Night*, *supra* note 7. But see *Seeds Sown for Future Growth*, *ECONOMIST*, Nov. 17, 2001, at 65 (reporting that "[p]oor countries were much less excited" about the DDA).

and in keeping an explicit trade-labor rights link off the DDA. Yes, the USTR's conciliatory style toward poor countries won praise.<sup>34</sup> True, they received "pledges of fresh technical assistance"<sup>35</sup> for capacity building, to include at least \$9 million for a "Doha Development Agenda Trust Fund" for use in training programs.<sup>36</sup> (Put aside the fact that the figure is proposed, and the funding is through voluntary contributions by members.<sup>37</sup>)

Still, is it excessive to identify contrasting views in the First and Third Worlds of trade law and its effects as a great schism plaguing the WTO? Third World activists urge a re-appraisal, dubbing the new round a "disaster for the world's poor," with Barry Coates, Director of the World Development Movement, calling the DDA "empty of development."<sup>38</sup>

Consider the following four facts about the DDA from a developing country vantage point.

(1) *Intellectual Property and Compulsory Licensing*: Arguably, the Doha TRIPS Declaration grants no new rights regarding compulsory licensing to developing countries.<sup>39</sup> The text of the Declaration clearly re-affirms the existing TRIPS provisions.<sup>40</sup> Paragraph 4 "reiterat[es] our [i.e., the WTO members'] commitment to the TRIPS Agreement," and paragraph 5 "maintain[s] our commitments in the TRIPS Agreement."<sup>41</sup> These re-affirmations appear designed to ensure compulsory licenses are granted in accordance with TRIPS article 31, which deals with the matter.

(2) *Intellectual Property and Imports*: Notwithstanding the possible controversy over whether the Doha TRIPS Declaration actually expands the right of WTO members to grant compulsory licenses, the silence of the Declaration on imported pharmaceuticals is telling. The Declaration benefits only those poor countries with the capability to manufacture the necessary medicines—otherwise, a compulsory license has no practical value. The Declaration says nothing about whether a country without this ability can override a patent in the interest of public health by importing cheap copies of a patented drug from a third country. The WTO's TRIPS Council has until the end of 2002 to resolve the matter.

(3) *S & D Treatment for Export Subsidy Phase-Outs*: Article 27.4 of the SCM Agreement gives developing countries until January 1, 2003 to phase out these prohibited (or "red light") subsidies, while least-developed countries are exempt from the obligation to eliminate them. An extension beyond this date is possible, if an application was submitted to the WTO's SCM Committee at least one year earlier (i.e., by December 31, 2002).<sup>42</sup> Eighteen developing countries met the deadline.<sup>43</sup> The DDA states that when the Committee ap-

34. See Jonquières, *All-Night*, *supra* note 7.

35. See *id.*

36. See Guy de Jonquières, *Europe: Move to Bring More Poor Countries to Trade Round*, FIN. TIMES, Feb. 4, 2002, at 2.

37. See Daniel Pruzin, *Moore Hails "Outstanding Year" for WTO, Says Budget Hike Will Aid Poorer members*, 19 INT'L TRADE REP. (BNA) No. 1, at 9 (Jan. 3, 2002).

38. James Harding & Michael Mann, *Activists Call Deal "Disaster for Poor Peoples' Protestors"*, FIN. TIMES, Nov. 15, 2001, at 6.

39. See Chris Rugaber, *Intellectual Property: TRIPS Declaration Does Not Undermine IP Rights, Pharmaceutical Groups Say*, 18 INT'L TRADE REP. (BNA) No. 46, at 1862-63 (Nov. 22, 2001).

40. See TRIPS Draft Declaration, *supra* note 19.

41. See *id.*

42. *Id.*

43. *Id.*



proves the extension for phasing out an export subsidy program, it will be renewed automatically each year until the end of 2007, as long as the subsidizing country does not change its program to prefer local firms, and follows transparency obligations.<sup>44</sup> However, only export subsidies involving the full or partial exemption from tariffs and internal taxes that existed before September 1, 2001 are eligible for automatic renewal.<sup>45</sup> Likewise, only a developing country with a share of world merchandise export trade of less than 0.10 percent, and a gross national product in 2000 of \$20 billion or less, is eligible.<sup>46</sup>

(4) *The Ban on Taxing E-Commerce*:<sup>47</sup> The ban applies to digitized goods, i.e., goods like printed materials, software, music, films, and video games that could be shipped physically, but are transmitted across the internet. However, assuming many such goods were shipped in digitized form, the top ten potential losers of tax revenue from this ban, other than the EU (the largest loser in dollar terms of foregone customs duties), Canada (6th), and Israel (10th), would be developing countries: India (2nd); Mexico (3rd); Malaysia (4th), Brazil (5th), China (7th), Morocco (8th), and Argentina (9th).<sup>48</sup>

These facts suggest that it is sensible to re-appraise the heralded success of Doha. Lest there be any doubt, consider the post-Doha remark of Director-General Moore: "We're setting ourselves up for a difficult fifth ministerial."<sup>49</sup>

## B. TRADE LAW AS A TRANSLATION DEVICE

The starting point for a re-appraisal is to appreciate that for most developed country WTO members trade law translates into practice the economic theory in favor of eliminating tariff and non-tariff barriers. Trade law is the device to implement comparative advantage pioneered by classical economists, namely David Ricardo, and embellished by neo-classical and modern economists. Yet, industrialized countries do not invariably use trade law for this purpose; hence the result is not perfect implementation of economic doctrine.<sup>50</sup> Were that so, trade law texts would be blissfully short, mandating an end to barriers without delay, exception, or allowance for recidivism.

In fact, for the industrialized countries, indeed for all WTO members, trade law has a key secondary function. It serves as a political regulatory device, as the *Financial Times* instructed in Doha's wake:

Although countries benefit economically from dismantling their own trade barriers, rather than those of trading partners, political logic works the other way round. To win domestic support for trade liberalisation, politicians need to show they are doing their utmost to open others' markets, while conceding as little as possible.<sup>51</sup>

44. Draft Ministerial Declaration, *supra* note 11.

45. *Id.*

46. *Id.*

47. See Daniel Pruzin, *Information Technology: Developing Countries Seen Losing Most from WTO E-Commerce Duty Moratorium*, 18 Int'l Trade Rep. (BNA) No. 47, at 1900 (Nov. 29, 2001).

48. *Id.*

49. Pruzin, *Moore Warns*, *supra* note 23.

50. See Ronald A. Brand, *GATT and United States Trade Law: The Incomplete Implementation of Comparative Advantage Theory*, 2 J. LEGAL ECON. 95 (1992) (arguing that the translation of economic theory into practice is far from perfect, particularly because of the (1) lack of private party participation in the application of trade rules, and (2) interference to the operation of comparative advantage caused by trade remedies).

51. Jonquières, *All-Night*, *supra* note 7.

That is, trade law is a means to reach a new equilibrium among domestic economic agents (producers, consumers, and the government) when a shift to freer trade is contemplated. Trade law manages the shift, typically eschewing a dramatic, instantaneous expurgation of tariffs and quantitative restrictions in favor of carefully crafted phase-out periods coupled with safeguard remedies should disequilibrium (i.e., unacceptably high short-term adjustment costs that might threaten the political or social order) arise.

The First World's understanding of trade law as a translation device is premised on the belief that the freer trade regime it puts into practice is normatively good. The criterion for "goodness" is a utilitarian calculation that, on balance, trade liberalization is a gain for a country and, by extension, the world. Ricardo gave a static net gain rationale in the 19th century, and it has been elaborated and refined in recent models of dynamic gains.

Translation is precisely what many non-industrialized countries dispute with wealthier WTO members. In the view of these countries, the net gains are, first, theoretical. In practice, they do not always work out quite the way economists predict, because of the messy details of reality. That aside, the second and more important objection is that net gains tend to accrue in the First World.

Yes, some sectors in some developing countries benefit from more export opportunities, and consumers in those countries with sufficient incomes enjoy a broader and cheaper range of consumption opportunities. Still, on balance, the perception is that the legal regime of the General Agreement on Tariffs and Trade (GATT) and WTO do not deliver the net benefits—in the form of faster growth and income-poverty reduction—that the First World and its economic theorists claim. Fifty years (i.e., since the GATT, dated October 30, 1947, entered into force on January 1, 1948<sup>52</sup>) of trade liberalization may have done a lot of good, but only for a handful of countries—at least that is the impression. This theory is reinforced by assorted statistics and projections, such as those of the U.N. Conference on Trade and Development (UNCTAD). UNCTAD forecasts that by 2015, only one of the World's forty-nine poorest countries, Lesotho, will cross the threshold of \$900 per capita GNP, and thenceforth graduate from the unhappy cohort of "least developed" countries (those with less than \$1,000 per capita GNP) to "developing" countries. Of the remaining forty-eight countries, twenty-one will not cross it in 100 years.<sup>53</sup>

Never mind there is empirical evidence to rebut this perception. Most recently, the World Bank's Policy Research Report, *Globalization, Growth, and Poverty* (2002) points to a strong association between (1) trade liberalization, and (2) economic growth and poverty reduction.<sup>54</sup> Forget, also, the well-developed body of S&D treatment rules to help devel-

52. See RAJ BHALA, *INTERNATIONAL TRADE LAW HANDBOOK* 50 (2001) (entry on "GATT") [hereinafter *HANDBOOK*].

53. See Alan Beattie & Frances Williams, *International Economy & the Americas: Poor Countries Talks to Aim at "Deliverables,"* *FIN. TIMES*, May 14, 2001, at 5; Mike Moore, *How to Lift the Barriers to Growth,* *FIN. TIMES*, May 14, 2001, at 11.

54. See also David Dollar & Aart Kraay, *Spreading the Wealth*, 81 *FOREIGN AFF.* 120 (2002) (concluding that over the last twenty years, the integration of developing countries with developed countries has afforded poor people the opportunity to improve their lives); David Dollar & Aart Kraay, *Growth Is Good for the Poor*, *DEV. RESEARCH DEP'T, THE WORLD BANK STUDY* (2000), available at <http://www.worldbank.org/research/growth/absddolakraay.htm> (arguing from data from eighty countries over forty years that openness to trade increases economic growth and the incomes of poor people in those countries rises proportionately with growth); Dan Ben-David et al., *Trade, Income Disparity and Poverty* (World Trade Organization Special Studies No. 5) (1999) (arguing that developing countries that are more open to trade are catching up with developed countries as regards living standards, and that trade liberalization contributes strongly to poverty alleviation).

oping countries manage political and social problems associated with adjustment to freer trade (i.e., rules just for them that play the secondary role of regulating the shift from an equilibrium associated with a closed macro-economy to a new equilibrium of an open macro-economy).<sup>55</sup> Focus instead on the incongruous outlook held by Third World countries, which account for roughly 80 percent of the WTO's membership.<sup>56</sup> By listening to trade law officials, practitioners, professors, and (tellingly) students in the Third World, it is easy to detect widespread skepticism about trade law and its effects.

### C. TEN PERCEPTIONS

Even after Doha, the United States has yet to deal with anecdotal evidence easily gathered by traveling to, for example, South Asia (e.g., India, Pakistan, and Bangladesh), East Asia (e.g., China, Vietnam, Laos, Malaysia, and Thailand), and Latin America (e.g., Mexico and Argentina). The perceptions may be grouped into ten general categories:

(1) *Dominance of the Global Trading System*: The global trading system is dominated by a few hegemonic trading powers, led by the United States. This minority tends to be far more interested in gaining market access to, or shutting imports out from, developing countries than in promoting export-oriented growth in those countries. The powers preach free trade until they come to the negotiating table with developing countries, when they become mercantilists.

(2) *Dominance of the WTO*: The faces at the WTO Secretariat evince dominance by a handful of industrialized countries. Of the 552 positions there in 2001, French citizens occupied 129 of them.<sup>57</sup> The country with the second-highest representation was the United Kingdom (71 British nationals held WTO Secretariat positions), followed by Spain (36), Switzerland (31.5), Canada (26), the United States (23.5), Italy (16), Germany (13), and Ireland (13).<sup>58</sup> In other words, the top nine represented countries were western and industrialized, accounting for 359 of the 552 jobs, or 65 percent of the posts. India was the only Third World country with notable representation (with ten Indians holding positions).<sup>59</sup> Hardly any nationals hailed from significant developing countries like Malaysia (1.5 persons) and Thailand (2).<sup>60</sup> The Secretariat also fared poorly in staffing positions with citizens of newly industrialized countries. None came from Singapore, and a *de minimis* number from Korea (2), Brazil (2.5) and Mexico (2).<sup>61</sup>

55. See RAJ BHALA, *TRADE, GROWTH, AND INJUSTICE* pt. 4 (Foundation Press, forthcoming 2003) (classifying and analyzing the S & D treatment rules in a "Theological Framework"); PETER GALLAGHER, *GUIDE TO THE WTO AND DEVELOPING COUNTRIES* 133–88 (2000) (surveying the S & D treatment rules in the Multilateral Trade Agreements and Dispute Settlement Understanding, reached during the Uruguay Round); Alice Alexandra Kipel, *Special and Differential Treatment for Developing Countries*, in *THE WORLD TRADE ORGANIZATION* 617, 626–60 (Terence P. Stewart ed., 1996) (explaining the S & D rules in the Uruguay Round agreements).

56. See Robert B. Zoellick, U.S. Trade Representative, *The WTO and New Global Trade Negotiations: What's at Stake*, Address Delivered to the Council on Foreign Relations, Washington, D.C. (Oct. 30, 2001), at 8 (text prepared for delivery and distributed publicly).

57. The employment statistics are in World Trade Organization, *Overview of the WTO Secretariat*, Table of Regular Staff by Nationality, available at <http://www.wto.org>. There were 512.5 actual employees, and the difference reflected vacancies.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

(3) *Dominance of the Languages of the WTO*: Any visitor to the WTO website has observed that three languages pre-dominate the WTO: first and foremost, English, with French and Spanish the other two functional languages.<sup>62</sup> The same observation is apparent from job ads posted by the WTO in prominent publications like *The Economist*. Typically, English is required, with proficiency in French or Spanish also required or highly desired and giving English the highest status makes sense. It is the international language of business and the Internet, and it is the second most-widely used language in the world, with 514 million speakers.<sup>63</sup> But, it is a distant second to Mandarin Chinese, which boasts 885 million speakers.<sup>64</sup> A close third to English is Hindi, with 496 million speakers.<sup>65</sup> Spanish follows fourth, with 425 million, and then comes Russian (275 million), Arabic (256 million speakers) and Bengali (215 million speakers).<sup>66</sup> French is ninth in the top ten, with 129 million speakers (Japanese is tenth with 126 million speakers), approximately half of the number who converse in Russian and Arabic, and 60 percent of the number of Bengali speakers.<sup>67</sup> From a developing country perspective, even discounting the prominence of Spanish and French in many developing countries, it is entirely reasonable to wonder why both Spanish and French are featured so prominently, while no importance seems to be placed on the key non-western Third World languages, namely, Mandarin, Hindi, Arabic, and Bengali. That tilt in favor of the European languages—particularly French—may well reinforce the skewed employment hiring patterns at the Secretariat noted above. The tilt is all the more odd given that even in the affairs of the European Commission, the dominant language is English (used, for example, for two-thirds of all internal documents).<sup>68</sup> To put the point more controversially, the languages used for WTO affairs ought not to be selected with a view to appeasing proponents of a French cultural exception (or those, *comme ce professeur*, who admire French language and culture), nor to entrenching the interests of any one country or small group of countries in the Secretariat. Developing countries might reasonably ask whether an approach like that taken by the United Nations—designating a broader number of working languages—might enhance the legitimacy of the WTO and the ability of countries to participate. Or, they might take a more business-like approach, and lobby for a universal English rule.

(4) *Unequal Bargaining*: It is true many developing countries “came of age” at Doha, by adroitly building coalitions, organizing tactics, and setting goals.<sup>69</sup> Examples were Nigeria (which, on behalf of many African countries, argued successfully for deferral of negotiations on government procurement and customs procedures because poor countries lacked resources to negotiate immediately<sup>70</sup>), Tanzania, and Uganda.<sup>71</sup> Still, for two reasons, the

62. See generally WTO Web site, [www.wto.org](http://www.wto.org).

63. The statistics set forth herein are from Darlene Superville, *Global Forces Silence Ethnic Tongues*, WASH. TIMES, Aug. 6, 2001, at A12 (table on World Languages).

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. See Daniel Dombey, *How English Became the Main Euro-Speak*, FIN. TIMES, Aug. 17, 2001, at 2.

69. Jonquières, *All-Night*, *supra* note 7.

70. See Gary G. Yerkey, *U.S. Plans Early Push for Reform of Customs, Public Procurement Rules in New WTO Talks*, 18 Int'l Trade Rep. (BNA) No. 48, at 1935 (Dec. 6, 2001).

71. See *id.* In contrast, India's hectoring and obstructionism were highly controversial. See *Letter to the editor: Pascal Lamy is the Real Villain of the WTO's Doha Meeting*, FIN. TIMES, Nov. 24, 2001, at 8.

bargaining table where multilateral trade negotiations occur remains slanted. The powerful WTO members have large armies of highly trained trade lawyers, economists, and accountants arrayed against a smaller number of less-expert representatives from developing countries, some of who hold multiple portfolios (i.e., are responsible for several non-trade fields, and thus are stretched in terms of time and energy). Moreover, there is a mismatch of economies represented by officials at the table. The dominant economies are diversified, hence they are unlikely to experience serious adverse effects should access to one export market be curtailed, or one export sector fair poorly. In contrast, many developing country WTO members have non-diversified economies, reliant on one or a small number of commodity exports, and their largest customers are the powerful members. Consequently, alienating the officials from those members by taking a hard-line at the table is not a strategic option.

(5) *Legal Capacity and Effective Implementation*: In 2001, the United States gave over \$555 million in trade capacity assistance—more than any other country.<sup>72</sup> But that help must be juxtaposed with the problem. While, the Uruguay Round produced the broadest and most complex trade agreements in history. Establishing the legal capacity to untie them, and sew them into the fabric of domestic law, is the problem. The Decision taken at Doha on Implementation-Related Issues and Concerns bespeaks the problem.<sup>73</sup> Developing countries, lacking legal capacity, have a far worse time coming to grips with the texts than developed countries, where the shortage of skilled trade lawyers is not acute. Some—like Bangladesh—have not yet enacted all of the accords into domestic law.

(6) *Near-Impossibility of Effective Participation*: Even if Third World WTO members comprehended and fully implemented the legal agreements from the previous trade round, they could hardly be expected to keep up with the pace of activity at the WTO. Indeed, they have virtually no say over that pace. The key WTO members, in terms of setting agendas and priorities, organizing meetings, formulating positions, and so forth, are the usual suspects. Many developing country members cannot participate fully in WTO affairs as structured by members like the United States. For example, there are dozens of meetings at the WTO per week. However, many Third World members cannot afford a permanent mission in Geneva, or if they can, to staff it with multiple delegates. Thus, coverage of these meetings—much less playing a leading role in them—is impossible.

(7) *Skewed Benefits from Import Liberalization*: The Uruguay Round obligations aim to liberalize imports of goods and services, which means the rules benefit the hegemonic trading powers already possessing diversified economies. Their businesses gain from increased market access when developing countries, in compliance with the obligations, open to imports of goods and services. Indeed, these multi-national corporations sometimes are well capitalized and expert enough to re-colonize developing country economies, should they be permitted to do so. As for import-competing sectors in developed countries, the risks from further trade liberalization are low. In most sectors, tariff barriers already have been reduced to historically low levels, so they already have made the transition to freer trade. In sectors still protected by tariff spikes or quantitative restrictions, the developed country WTO members are wealthy enough to afford adjustment assistance for dislocated

72. See Zoellick, *supra* note 56, at 10.

73. See Ministerial Conference, Fourth Session (Doha), *Implementation-Related Issues and Concerns*, Decision, WT/MIN(01)/W/10 (Nov. 14, 2001).

workers and industries (even if they do not always provide it on generous or efficient terms), whenever liberalization occurs.

(8) *Victimization by Trade Remedies*: In some import-competing sectors considered sensitive, developed countries eagerly and vigorously use trade remedies—principally, AD, CVD, or safeguards—to extend the nature and duration of protection. There is a deliberate irony here. Those sectors tend to be precisely the ones in which developing countries are most likely to gain a comparative advantage (e.g., steel, textiles, low-value added manufacturing items, and agriculture, especially cotton, rice, and sugar), if open to free trade. Indeed, roughly 70 percent of exports from the poorest countries are in farm products and labor-intensive manufactured goods like textiles.<sup>74</sup> Applying trade remedies impedes infant industries growth in Third World countries, and thereby of competitive, diversified economies.

(9) *Negative Effects on Least Developed Countries*: Quite evident are negative effects on the world's forty-nine least developed countries of *de facto* mercantilism by a handful of powerful countries, their dominance of the WTO and trade negotiations, and the application of trade law obligations and remedies.<sup>75</sup> Of these forty-nine countries (the largest of which is Bangladesh), thirty-four are in Sub-Saharan Africa. The least developed countries are home to about 10 percent of the world's population—over 600 million people, who survive on an annual per capita GNP of less than \$250.<sup>76</sup> Yet, in 1990, the least developed countries accounted for 0.48 percent of world exports.<sup>77</sup> In 1999, the figure fell to 0.40 percent. Even if it were to rise significantly, the increase would make little difference absent concomitant debt relief. Two-thirds of the world's poorest forty-nine countries have unsustainable debt burdens.<sup>78</sup> Hence, investing new export earnings in local economies would be compromised by their use for debt service.

(10) *Legal Capacity and WTO Litigation*: Whenever a Third World country member fails to meet its import liberalization obligations or is suspected of an unfair trade practice, it faces a dumping or subsidization suit from a developed country. Likewise, if a poor member, employing fair practices, manages to penetrate significantly a product market in a powerful WTO member, then it is likely to face a safeguard action. Whatever the gravamen of the complaint, the consequent litigation will follow the DSU. In reality, most DSU cases are wars the powerful WTO members are best able to fight. Yes, small countries have defeated large ones in some cases. But in general, it is only powerful members that possess armies of trade lawyers, backed by multinational corporate interests. In some Third World countries government agencies responsible for trade matters, like the Bangladesh Ministry of Commerce, have no full-time staff of attorneys versed in international trade law equipped to handle WTO complaints, much less to bring them. Nor is there a budget to obtain the legal weaponry necessary to fight in Geneva.

Introducing this anecdotal evidence is not a comment on the accuracy of the ten perceptions. It is offered for its probative value. It demonstrates views of WTO members, which contain roughly four billion of the world's 6.5 billion people. That demographic fact

74. See *Seeds*, *supra* note 33.

75. See generally Alan Beattie & Frances Williams, *Talks on Poor Lands Will Aim at "Deliverables,"* FIN. TIMES, May 14, 2001, at 5; Mike Moore, *How to Lift the Barriers to Growth*, FIN. TIMES, May 14, 2001, at 11.

76. *Id.*

77. *Id.*

78. *Id.*

suggests, whether true or not, perception matters when held by so large a block. Indeed, there is more than just anecdotal evidence.

There is testimonial evidence of the lack of a consensus among Third World countries for further trade liberalization. The testimonies are from trade ministers who represented these countries at Doha. In their prepared statements (posted on the WTO's Web site during the Conference), they highlighted the disconnect between the promises of the Uruguay Round agreements and their actual effects.<sup>79</sup>

#### D. EXTENDING THE MELIAN DIALOGUE?

Apparently, the United States did not deal with these perceptions in any systematic or effective way. Rather, it touted the benefits of freer trade. It repeated its faith in the Uruguay Round as a large part of the cure for Third World problems,<sup>80</sup> essentially saying: "Yes, well, whatever, don't worry; just look at these statistics—keep liberalizing and things will improve."

The benefits are not chimerical, and the earnestness of American's belief is not in doubt. U.N. Secretary-General, Kofi Anan, may well be correct in declaring "[t]he poor are not poor because of too much globalization, but because of too little."<sup>81</sup> Yet, perceptions sometimes get confused with reality. It happened before and at Doha, and the mess has yet to be sorted out. No unscrambling will occur so long as the American response remains no more imaginative than sloughing off earnest perceptions.

What will continue is a string of American "successes," in the sense of trade negotiation agendas that, like the DDA, accords with American producer interests. Yes, at Doha, the United States "gave" some on intellectual property and dumping. But it made no dramatic pro-development commitments. To the contrary, it continued to push to the agenda issues deeply troubling to Third World WTO members. Enforcing labor standards, and increasing participation in WTO adjudication by non-governmental organizations (NGO) are examples.

Certainly, these innovations promise long-term gains, to developing country workers and to the legitimacy of the DSU mechanism. But from a poor country's perspective, both initiatives could drive up its costs of production (resulting from higher labor standards), and litigation costs (owing to more complex procedures involving multiple parties). Thus, the poor country might well view the Doha result not so much as a success, but as an

79. See, e.g., Statement by the Honourable Manuel Roxas II, Secretary of Trade and Industry, WT/MIN(01)/ST/8 (Nov. 10, 2001) (stating that "Proponents [of a new round of trade negotiations] again remind us of the benefits that will accrue [to] developing countries if we agree to the issues which make up this new round. Proponents cite the benefits from increased trade; for them, this certainly has been their experience. Ours is different.").

80. See, e.g., Statement by H.E. Mr. Robert B. Zoellick, United States Trade Representative, WT/MIN(01)/ST/3, (Nov. 10, 2001), at 2 (acknowledging implementation problems with the Uruguay Round agreements, and then stating that "[t]he trade liberalization ushered in by the Uruguay Round highlights the potential of more trade for developing nations"); Zoellick, *supra* note 56, at 8–9 (stating that "[t]rade is a critical element – perhaps the most important element – in economic development, offering the biggest, and most lasting, dividends," discussing a World Bank study indicating that developing countries that open themselves to trade grow faster, and experience faster declines in poverty, than those that do not, pointing to the benefits of openness experienced by South Korea and the costs of protection incurred by Ghana, citing statistics on export growth from developing countries after the Uruguay Round, and linking open trade with political reform).

81. See Zoellick, *supra* note 56, at 9.

extension of the Ancient Greek Melian Dialogue to international trade relations: that the strong will do what they do, and the weak will suffer what they must.

### III. The Islam Challenge

Against Western claims that Islamic "fundamentalism" feeds terrorism, one powerful paradox of the twentieth century is often overlooked. While Islam may generate more political violence than Western culture, Western culture generates more street violence than Islam. Islam does indeed produce a disproportionate share of mujahideen, but Western culture produces a disproportionate share of muggers. The largest Muslim city in Africa is Cairo. The largest westernized city is Johannesburg. Cairo is much more populous than Johannesburg, but street violence is only a fraction of what it is in the South African city. Does Islam help pacify Cairo? I, along with many others, believe that it does. The high premium Islam places on *umma* (community) and *ijma* (consensus) has made for a Pax Islamica in day-to-day life.<sup>82</sup>

#### A. WORLD PEACE THROUGH WORLD TRADE

Since at least the 1978–79 Islamic Revolution in Iran, Americans have gorged on a visual diet of scenes of angry Muslims, dressed in traditional garb, burning the *Stars and Stripes*, compelling women to wear a *hijab* (veil), and marching unquestioningly to a mullah's call of *Allah-hu-Akbar* ("God is Great"). Imbalanced diets lead to bad health, and these visuals have caused both seizure and paralysis. The convulsions are about military defense—how to guard against the ostensible Islamic threat to America's interests. The lack of movement concerns trade law—how to integrate more fully Islamic countries into the GATT—WTO system and, how that integration might contribute to America's security.

A grand vision of international trade is that insofar as it leads to economic growth and poverty reduction, it gives trading nations a stake in the international economic order. As the standard Ricardian paradigm predicts, stakeholders benefit from a broader array of cheaper consumption opportunities owing to increased imports, and from broader market access for exported items they make. In turn, the incentive to engage in international war or conflict diminishes. No economically rational stakeholder would destroy the salubrious economic linkages.

Peace through trade is not a turn-of-the-millennium insight. In the 1930s, this vision prompted reversal of protectionist legislation, and in the 1940s, the birth of multilateral economic agreements like GATT. It was manifest in the work of President Franklin Roosevelt's Secretary of State, Cordell Hull.<sup>83</sup> Secretary Hull helped dismantle many of the notorious Smoot-Hawley tariffs by negotiating thirty-two bilateral trade pacts with twenty-seven countries, under the authority of legislation he supported, the Reciprocal Trade Agreements Act of 1934.<sup>84</sup> In these bilateral deals, he inserted an unconditional most-favored nation (MFN) clause, thereby ensuring the spread of barrier reductions to third

82. Ali A. Mazrui, *Islamic and Western Values*, 76 FOREIGN AFF. 118, 130 (Sept./Oct. 1997).

83. See Michael A. Butler, CAUTIOUS VISIONARY – CORDELL HULL AND TRADE REFORM, 1933-1937 164–65, 168–69 (1998) (explaining Hull's vision of a liberal international economic order, and quoting Hull's suggested language, which the President did not accept, for the 1936 Democratic Party platform condemning any return to protectionism and arguing that "the permanent security of the United States will be better assured by the maintenance of the principles of international justice and fair dealing than by the sole force of arms").

84. See Zoellick, *supra* note 56, at 2.



countries.<sup>85</sup> This vision—while not forgotten—has not been applied to the context in which it now is most needed: trade with Islamic countries.<sup>86</sup>

If opportunities created by trade liberalization nourish would-be Islamic entrepreneurs who otherwise might feed off, or be ruined by, violence and terrorism, then surely it is in America's—and the world's—security to offer the healthy sustenance. What better way to do so than invite these countries to participate more fully in global trade? Given that Islam now boasts 1.2 billion adherents (second only to Christianity's 2 billion followers),<sup>87</sup> and appears to be the world's fastest growing religion, is there really any choice but to make the invitation as attractive as possible?

## B. IDENTIFYING POTENTIAL INVITEES

Invitations, done properly, should be sent with care. Paying heed to which Islamic countries ought to be invited is no less important than coming around to the understanding that some ought to be invited. Precisely how is the United States to decide among the potential invitees to the trade liberalization gala? The gala really is a process, not a one-off event. It is meaningful and mutually rewarding participation in the GATT—WTO system and sensible regional and bilateral free trade arrangements.

Is one cause of paralysis in its trade law an implicit acceptance of the dichotomy between “fundamentalists” and “moderates”? That beguiling dichotomy is a veil over the variegated responses from the Islamic World in its struggle to come to terms with Western culture. Some parts of that World see the culture as decadent, and embodied in wave after wave of exports of goods and services. Trade links are regarded as the conduit for the marauding exports.<sup>88</sup> By extension, the pre-eminent institution dedicated to widening the conduit, the WTO, and its prominent champion, the United States, are viewed with suspicion. The adjective “some” must be stressed. This perspective hardly is universal among Muslims. Moreover, an irony must not be lost—who is threatening whom? Many Americans believe their country's interests are under siege from a “militant Islam,”<sup>89</sup> all the more so after

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85. *See id.*

86. Thus, for example, Representative James P. Moran (D.-Virginia) articulated the link, yet without extending it expressly to underdeveloped Islamic countries: “The real threat to our country are the millions of people who live in poverty and desperation around the world. The most potent weapon we have to fight that is free and open trade.” Joseph Kahn, *A Nation Challenged: The Legislation – Gain for Trade Bill That Some See as Aid in Terrorism Fight*, N.Y. TIMES, Oct. 4, 2001, at B1.

87. *See* Tad Szulc, *Abraham – Father of Three Faiths*, NAT'L GEOGRAPHIC (Dec. 2001), at 90, 96 (retracing the trek of Abraham, the patriarch of three major religions, through the Middle East, and providing demographic statistics).

88. The matter of culture and trade tends to be viewed as a conflict between, on the one hand, France and Francophone countries, and, on the other hand, the rest of the world. The matter takes legal shape in terms of an exemption from GATT and WTO obligations for cultural industries. This approach is like viewing a splendid room in Versailles through a keyhole – many parts of the room remain hidden from view. Similarly, many linguistic, ethnic, and religious groups beyond the Francophone world are concerned about the effect of trade liberalization on their traditions and ways of life. Constituencies in the Islamic world are among such groups.

89. *See, e.g.*, EDWARD W. SAID, *COVERING ISLAM HOW THE MEDIA AND THE EXPERTS DETERMINE HOW WE SEE THE REST OF THE WORLD* (Rev. ed., 1997) (discussing the biases in media coverage that result in Islam being seen as synonymous with religious extremism and terrorism). To be sure, not all of the accounts have taken this approach. *See, e.g.*, *ISLAM AND THE WEST* (Richard N. Frye ed., 1957) (containing a collection of essays on the possibility of an Islamic renaissance).

September 11. This belief puzzles some Muslims, who have felt themselves threatened by an exploitative, well financed, and militarily superior, the West, ever since the Crusades.<sup>90</sup>

In brief, appreciating subtleties and nuances among potential invitees in the Islamic World to the gala is necessary to treat the paralysis in American trade law, and to move toward a durable nexus between trade and security. That is, the challenge is to sort out the panoply and identify counterparts sharing the vision Secretary Hull embodied. To help meet this challenge, there is no dearth of journalistic and think-tank literature on trends in Islamic countries. Among the highly-regarded academic discussions are the works of Professor John Esposito—namely, *Voices of Resurgent Islam*,<sup>91</sup> *Islam—The Straight Path*,<sup>92</sup> *Islam and Politics*,<sup>93</sup> and *Islamic Threat: Myth or Reality*.<sup>94</sup> As far back as 1983, he studied twin (and probably symbiotic) forces in much of the Islamic World: (1) disillusionment with wholly the a-religious, western models of development; and (2) revival that bears multiple facets. These forces are symbiotically linked, and it is the dynamism inherent in the second that might lead Muslims to a brighter future reminiscent of the grand past they enjoyed until the end of the Islamic Caliphates (specifically the Four Rightly Guided Caliphs at Medina (632–661 A.D.), the Umayyad Caliphate (661–750 A.D.), centered in Damascus, and the Abbassid Caliphate (750–1258 A.D.), centered in Baghdad<sup>95</sup>), which was marked by the sacking of Baghdad by the Mongols in 1258. Professor Esposito's observation about these forces is no less true now than two decades ago when he wrote it, and only a few modest changes would be needed—words like “globalization” and acronyms like “WTO”—to bring the passage perfectly up to date:

If Islam's past strength, success, and power were signs of God's guidance and pleasure with the Islamic community's realization of His Will, modern Muslim history has instead been a record of the *ummah*'s [i.e., the Islamic community's] failure. Colonial rule, continued dependence on the West, and the disastrous Arab-Israeli war of 1967 were clear signs of an errant, debilitated community. Since Islamic belief and history taught that success and power were signs of a faithful community, Muslims might well ask “What had gone wrong in the Islamic world?” and “Why had God seemingly abandoned his community?” Religious leaders and traditionists in general countered that God had not abandoned the Muslims; rather the Muslims in pursuing a Western secular path of development had departed from and must now “return” to the straight path of Islam.

Modern elites were particularly disillusioned. They had cast their lot as members of developing nations with a Western-oriented future. Yet, they continued to find themselves victims of Western neo-colonialism. . . .

If the West had failed Muslims as an ally, what of the Western models of development so eagerly adopted by Muslim governments? The record of elite policies in nation building was judged to be dismal indeed . . . Problems of authoritarianism, legitimacy, and political participation continued to plague most Muslim countries . . . In addition, corruption and the con-

90. See, e.g., AMIN MAALOUF, *THE CRUSADES THROUGH ARAB EYES* (1984) (relying on the works of Arab chroniclers for an account of Saladin and the defeat of the Crusaders).

91. *VOICES OF RESURGENT ISLAM* (John L. Esposito ed., 1983).

92. JOHN L. ESPOSITO, *ISLAM – THE STRAIGHT PATH* (1991).

93. JOHN L. ESPOSITO, *ISLAM AND POLITICS* (3d ed. 1991).

94. JOHN L. ESPOSITO, *ISLAMIC THREAT: MYTH OR REALITY?* (1992). See generally Audio Tape: Professor John Swanson in the lecture series, *Islam* (1997) (Part II of the “Great World Religions” (available from The Teaching Company)), and the accompanying outline. I draw from that lecture as well as Professor Esposito's works.

95. See JOHN L. ESPOSITO, *THE ISLAMIC THREAT – MYTH OR REALITY* 31 (2d ed. 1995).

centration of wealth persisted as twin pillars of Muslim society while poverty, illiteracy, and overpopulation galloped along unchecked . . . The positive benefits of modernization seemed to benefit the few, while the lot of the masses remained relatively unchanged.

Muslim revivalists insist that the current religious revival is not simply a reaction to the West, but rather is part of an ongoing process of revival (*tajdid*) and reform (*islah*) which reflects a continuing tradition in Islamic history . . . However, the meaning and method of renewal varies with changing historical circumstances. What emerges is the picture of a tradition which, although fixed and stable, is neither stagnant nor monolithic. When the existing conditions and institutions of Islam seemed to warrant it, Muslim reformers have felt free to challenge the blind following of tradition (*taqlid*) and the Islamic establishment. They claimed their right to engage in independent analysis or interpretation (*ijtihad*) in order to re-form their societies.<sup>96</sup>

Not surprisingly, Professor Esposito inspires a move beyond the dichotomy, and uncovers three categories of response by the Islamic World over the last 100–150 years to the perceived western threat.

The first response, also the most conservative, is “Traditional Reformism.” It calls for full implementation of, and strict adherence, to the *Shari’a* (“the Sacred Law of Islam”<sup>97</sup>). The *Shari’a* is conceived as a body of principles and obligations grounded firmly in the *Koran* and *Sunna* (the words and deeds of the Prophet Muhammad (PBUH)).<sup>98</sup> According to the Classical Theory of the *Shari’a*,<sup>99</sup> these two are the most important—or “fundamental”—fonts of law. Lesser emphasis is placed on the two remaining sources, *Qiyas* (analogical reasoning<sup>100</sup>) and *Ijmaa* (consensus), which developed over the last 1,400 years (since the Prophet’s death in 632 A.D.) through the work of the *ulama* (religious scholars<sup>101</sup>).

The logic behind the Traditional Reformist call is that the *Shari’a* is a complete system that does not need amendment or supplement by modernist legislation or policy-oriented reasoning. Its inherent sobriety makes it the most exacting and, not surprisingly, the least popular (in terms of the number of Islamic societies that have heeded this call) response to the West. Saudi Arabia, under the influence of the *Wahhabi* movement, and Afghanistan, under the former Taliban regime, are among the few examples of Traditional Reformism in practice.

In the Esposito-inspired scheme, the second response to Western values embedded in goods and services exports is “Neo-Traditional Reformism.” Not unlike Traditional Reformists, Neo-Traditional Reformists seek to return to Islamic traditions based on the *Koran* and *Sunna*, which are accepted as the fundamental sources of the *Shari’a*.<sup>102</sup> Neither re-

96. John L. Esposito, *Islam and Muslim Politics*, in VOICES OF RESURGENT ISLAM, *supra* note 91, at 11–12, 14.

97. JOSEPH SCHACHT, AN INTRODUCTION TO ISLAMIC LAW 302 (1982).

98. “PBUH” is an Islamic term of respect typically following a reference to the name of the Prophet Muhammad. It stands for “Peace Be Unto Him.” To my mind, it is unfortunate when this acronym is ignored by western writers. Having stated it initially, for reasons of economy, hereinafter I shall assume it implicitly. No disrespect is intended by this economy. See KAREN ARMSTRONG, ISLAM – A SHORT HISTORY 202 (2000) (defining “*sunnah*”).

99. See SCHACHT, *supra* note 97, ch. 9 (explaining the Classical Theory).

100. *Id.* at 300. .

101. See ARMSTRONG, *supra* note 98, at 202.

102. Not surprisingly, Ibn Taymaiyah is popular among Neo-Traditionalists. Living in Syria during the late 13th and early 14th Centuries A.D., he was one of the prominent “Rejectionists,” a critic of the great synthesis of Al-Ghazali – and one who emphasized the *Koran* and *Sunna*. Neo-Traditionalists look to his methodology for inspiration in coming to terms with modernity.

sponse wants to alter basic traditions in light of Western influence. However, the word "Neo" is the clue to the difference between the two responses.

Traditional Reformists see nothing they like in Western values or structures. Their "reform" is rather like turning back the clock to the time of the recitation of the *Koran* and establishment of the *Sunna*. Neo-Traditional Reformists also seek guidance in the *Koran* and *Sunna*, but with a view to the present and future. Indubitably, the consequent reactions must be consistent with patterns in traditional Islamic society—yet, they are novel rejoinders. In sum, the response earns its prefix, because it returns to fundamental sources to find new ways to revive Islamic society, and the innovations can be justified precisely because they are grounded in tradition.<sup>103</sup>

That is not to say Neo-Traditional Reformists want an accommodation with western values and structures. On the one hand, not everything about the West coming via cross-border trade is worthy of embargo. Science and technology can be value free, and used to benefit Islamic societies. On the other hand, contradictions with the essential values of the *Koran* and *Sunna* are to be avoided. Neo-Traditionalists examine the (sometimes literal) meaning of the *Koran*, with a view to re-directing their societies in response to modernity. Likewise, re-discovery of the *Sunna* may result in societal re-orientation respectful of patterns established during the Prophet's days. Accordingly, there is a certain "case-by-case" methodology in this response, with an underlying wariness of the West.

The third response in Esposito's typology is "Liberal Reformism." It is unequivocally distinct from both Traditional and Neo-Traditional Reformism. It accepts as a legitimate objective accommodation with what the West has to offer. Liberal Reformists urge Islamic societies to change in the Global Age, albeit in a manner that accords with the guidance of the *Koran* and *Sunna*. Rather than seeing these fonts of the *Shari'a* as irreconcilable with the West (the Traditional Reformist tendency) or in an uneasy tension with the West (the Neo-Traditional Reformist tendency), Liberal Reformists see them illuminating a constructive and positive relationship with the West.

Their light reveals no contradiction between their essential precepts, on the one hand, and western science, technology, and some western values, on the other hand. In other words, for Liberal Reformists, it is possible to go back to the *Koran* and *Sunna*, and use them to construct a modern Islamic society. That society is well adjusted to globalization, and seeks to draw out what is best from the West. But it also is inspired by 1,400 years of defining and elaborating the *Shari'a*.

The obvious flexibility of Liberal Reformism derives from a concept of the divine origin of the "best." What is "best" in any society—Christian or Muslim—is so because God put it there in the first place. That origin imparts "best-ness." So, even if a good or service is exported from the West, if it is "best," then accommodating it surely is consistent with guidance from the *Koran* and *Sunna*. Certainly, accommodation does not mean capitulation. If the ultimate origin of the import is not divine, hence it is not the "best," then rejection would be appropriate, pursuant to guidance from the *Koran* and *Sunna*.

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103. What are examples of "new" responses – reforms to Islamic society from within – put forth by the Neo-Traditionalists? Most notably, there is the Iranian Revolution of 1978–1979 and the subsequent development of the Islamic Republic of Iran, and the Muslim Brotherhood movement that began in Egypt in the 1920s, and remains active.

## C. INVITE TWO OF THE THREE

By eschewing a division of the Islamic World into "fundamentalists" and "everyone else," and appreciating perceptive delineations of the type suggested by Esposito, it is easier to consider two tasks for American trade law toward the Islamic World: (1) identifying worthy invitees, and (2) issuing sincere invitations to the trade liberalization gala. Neither task is easy.

Each demands empathy from American trade officials, i.e., realization they are not alone in sensing threat, and thus appreciation for how the varied Islamic responses to the West and its values bespeak differences in enthusiasm for engagement in Hull's vision for world trade. Which response predominates in which country? In a single country two, or even all three, responses, may co-exist (uneasily), depending on which geographic area, or which ethnic, linguistic, or ideological group is examined. Unscrambling the complexities and assessing which response is (or can be bolstered to become) dominant is the heart of the Islam challenge.

This challenge is tough in the post-September 11th era. Since then, the United States has re-invigorated the dichotomy, putting Islamic countries into one of two camps: evil terrorists and their rogue-nation supporters (i.e., the fundamentalists), and good allies seeking to bring terrorists to justice (i.e., everyone else). That rhetoric is appealing in the war on terrorism. It is not a basis on which to build a network of trade ties in the war for prosperity. Indeed, it is a basis America rejected in its recent history. Had the good-versus-evil mind-set carried over from Second World War battles to post-War trading strategy, perhaps America would not have invited former enemies into the Marshall Plan or multilateral trading system. Arguably, the United States is rejecting the good-versus-evil approach in its economic policy toward Vietnam, Cambodia, and the Balkans.

Thus, the second task—having identified proper invitees and issuing the invitations—really is more of an extension than a revolution. Evidently, adherents to one movement, Liberal Reformism, are favorably disposed to fuller participation in the multilateral trading system and appropriate regional and bilateral trading arrangements. Neo-Traditional Reformists may not be implacably averse. Sincere invitations ought to be issued to countries dominated (or possibly so) by them. Inviting Liberal Reformists, and possibly also Neo-Traditional Reformists, may encourage these responses. The invitations are an opportunity to show global trade is neither a vehicle for a *Pax Americana* nor inconsistent with the essential principles of the *Koran* and *Sunna*. The invitations could also contribute to America's national security interest, and to international order.

How so? First, if there is anything to the Hull-type vision of peace through trade, then impoverished Islamic countries that grow economically, in part through expanded trade, will gain a stake hold in the global trade regime. (Their impoverished state is a point of intersection between the Poverty and Islam challenges.) To a rational calculator, destroying that regime may be a lot less appealing once its bounties flow to all segments of a society.

Second, an invitation may impress Liberal Reformists, and possibly also Neo-Traditional Reformists, that another great schism in the world economy (one in addition to that between the First and Third Worlds) is unacceptable. That emerging divide is between the capitalist countries, mostly of Christendom or in which Christianity is growing, and developing countries of the Muslim World. The invitation may underscore that the destiny of WTO members is a common one: economic prosperity and physical security; or, economic stagnation (if not worse) and physical insecurity (again, if not worse).

Third, the invitation may highlight the importance the United States places on the first word in the WTO—"World." Some trade gurus opined that the WTO was not worthy of its name until China, with 1.2 billion people, became a member.<sup>104</sup> They were right, and the same rationale applies to the Islamic world, with its comparable population. To be sure, many Islamic countries already are WTO members—but (as discussed below) some prominent ones are not. Those that hold membership are not necessarily integrated into the club in the fullest degree.

#### D. ONLY JORDAN INVITED THUS FAR

Highlighting countries influenced by Liberal Reformism, and possibly also those swayed by Neo-Traditional Reformism, and sending off sincere invitations to them, does not seem to be on the agenda of American trade officials. The paralysis has not been complete—but nearly so. It is true that on the eve of the Doha Conference, the USTR wrote of the Hull-type link between trade liberalization and advancing the causes of political reform and economic growth.<sup>105</sup> Yet, the link was spelled out more for the benefit of a Congress hesitant to grant trade-negotiating authority to the President than for the benefit of an Islamic world (or parts thereof) dubious about how it fits into the multilateral trading system. The emphasis is understandable in the calculus of inside-the-Beltway trade politics, but it hardly matters in that "other" world. Thus, today, the only invitee embraced with any warmth by the United States is Jordan.

The United States signed a free trade agreement (FTA) with Jordan, which entered into force on December 17, 2001 following President Bush's proclamation on December 7, 2001.<sup>106</sup> Under it, tariff and non-tariff barriers on almost all agricultural and industrial products traded between the two countries will be eliminated within ten years,<sup>107</sup> with the longest phase-out period for the tariffs currently at the highest levels.<sup>108</sup> The pact also reduces barriers to trade in services (especially finance, telecommunications, couriers, and energy distribution), and mandates adherence to international standards for intellectual property rights.<sup>109</sup>

However, from the perspective of Liberal Reformists and Neo-Traditional Reformists, especially those in Arab countries, surely three facts about the Jordan FTA are telling. First, the FTA came about more than fifteen years after America's first FTA with another country in the Middle East—Israel. The Israel-United States FTA was signed on April 22, 1985<sup>110</sup>

104. See Raj Bhala, *Enter the Dragon*, 15 AM. UNIV. INT'L L. REV. 1469, 1480 (2000).

105. See Robert B. Zoellick, *Countering Terror with Trade*, WASH. POST, Sept. 20, 2001, at A35. The application of the argument to Congress was not well-received by the ranking Democrat on the House Ways and Means Committee, Charles Rangel, who accused the U.S. Trade Representative of questioning the patriotism of opponents of fast-track negotiating authority. The Trade Representative disclaimed that implication. See *Trading Barbs*, FIN. TIMES, Sept. 28, 2001, at 15; Jim Landers, *Trade-Terrorism Rhetoric Faulted*, DALLAS MORNING NEWS, Oct. 1, 2001, at 1D.

106. See *Bilateral Breaks: President Signs Proclamation to Bring U.S.-Jordan FTA Into Effect on Dec. 17*, 18 INT'L TRADE REP. (BNA) No. 49, at 2006 (Dec. 13, 2001) [hereinafter *President Signs*].

107. *Id.*

108. Specifically, there are four broad categories for eliminating industrial tariffs: (1) existing tariffs below 5 percent are phased out in two years, (2) existing tariffs between 5 and 10 percent are phased out in 4 years, (3) existing tariffs between 10 and 20 percent are phased out in five years, and (4) existing tariffs over 20 percent are phased out in 10 years. See Gary G. Yerkey, *U.S. Signs Free-Trade Pact with Jordan that Includes Labor, Environment Rules*, 17 INT'L TRADE REP. (BNA) No. 42, at 1653 (Oct. 26, 2000).

109. See Yerkey, *U.S. Signs*, *supra* note 108, at 1653.

and both houses of Congress passed implementing legislation signed by President Reagan on June 11, 1985.<sup>111</sup> The Jordan deal remains America's only FTA with an Arab nation or with any Islamic nation.<sup>112</sup>

Second, the Jordan FTA is commercially insignificant, and economically unthreatening to the United States. In 2000, the United States exported \$306 million worth of goods to Jordan, while Jordan exported \$73 million to the United States.<sup>113</sup> These statistics evince a large bilateral trade surplus that the FTA is unlikely to dent. The International Trade Commission confirmed that lack of a threat. Its report<sup>114</sup> concluded the FTA would have no measurable impact on American exports, given the insignificant share of American exports to Jordan relative to total American exports (\$270 million and \$642 billion, respectively, in 1999). As for imports, there would be no measurable impact, save for one sector—textiles and apparel—where Jordanian imports would rise. Yet, the overall impact on imports into, and production and employment in, the United States due to the rise in Jordanian textiles and apparel imports would be negligible, because of the small share of Jordanian imports in total to American imports (\$31 million versus \$1 trillion in 1999).

Liberal Reformists and Neo-Traditional Reformists might say the United States sacrificed nothing by entering into an FTA with Jordan. Indeed, they might note (with a touch of cynicism) that the pact contains a safeguard clause to guard against import surges of a particular commodity by “snapping back” the pre-pact level of protection (the remedy is not one-sided, as Jordan could invoke it).<sup>115</sup> Also, they might point to usage of the FTA “Breaux-Cardin” rule of origin for textile and apparel products, specifically certain fabric products, and silk handkerchiefs and scarves.<sup>116</sup> That rule deems the country of origin of such products to be the country in which the base fabric is knit and woven.<sup>117</sup> The rule shifts backward in the multi-step production process (growing or cultivation of fiber, spinning of yarn from fiber, knitting and weaving of yarn to make fabric, cutting and sewing of fabric, and final assembly of cut and sewn pieces) the key event determining origin. The further back the dispositive event, the more protectionist the origin rule. Hence, the Reformists could point out, duty-free treatment would not be given to these products from Jordan, unless they were made of fabric knit and woven in Jordan.

The third telling fact is that the delivery of the invitation to Jordan was contentious. Negotiating the FTA led to a polarized debate, though less so with the Jordanians than with Congress, over labor and environmental provisions.<sup>118</sup> With the Jordanians, the agree-

110. See Bhala, *supra* note 52, at 58.

111. HOUSE COMM. ON WAYS AND MEANS, 107TH CONG., 1ST SESS., OVERVIEW AND COMPILATION OF U.S. TRADE STATUTES 262 (Comm. Print June 2001) [hereinafter OVERVIEW]. The implementing legislation, the United States – Israel Free Trade Area Implementation Act of 1985, is codified at 19 U.S.C. § 2112.

112. In 1995, Congress delegated to the President proclamation authority to modify tariffs on products from the West Bank, Gaza Strip, and industrial zones between Israel and Egypt and Israel and Jordan. This delegation took the form of an amendment to the Israel FTA (discussed below). See OVERVIEW, *supra* note 111, at 264–65.

113. See *President Signs*, *supra* note 106.

114. See U.S. INTERNATIONAL TRADE COMMISSION, ECONOMIC IMPACT ON THE UNITED STATES OF A U.S. – JORDAN FREE TRADE AGREEMENT, No. 3340 (Sept. 2000).

115. See Yerkey, *U.S. Signs*, *supra* note 108, at 1653.

116. See Gary G. Yerkey, *U.S., Jordan Near Completion of Talks on Bilateral Free-Trade Pact*, *Sources Say*, 17 Int'l Trade Rep. (BNA) No. 40, at 1574 (Oct. 12, 2000).

117. *Id.*

118. See Nancy Ognanovich, *Bush Tells Abdullah He Will Push Hill to Adopt Jordan Free-Trade Agreement*, 18 Int'l Trade Rep. (BNA) No. 16, at 632 (Apr. 19, 2001).

ment to start negotiations was announced by President Clinton and King Abdullah on June 6, 2000.<sup>119</sup> Negotiations finished, and the FTA was signed, on October 24, 2000.<sup>120</sup> President Clinton sent the FTA to Congress on January 6, 2001,<sup>121</sup> and the Senate passed the pact on September 24, 2001,<sup>122</sup> following House passage on July 31, 2001.<sup>123</sup> Because the Clinton administration negotiated the FTA, the views of its labor and environmental supporters were manifest by the inclusion of labor and environmental provisions in the text of the FTA itself. The Jordanians acquiesced, but the Republicans in Congress did not drop the matter quietly.

Movement of these provisions from side agreements, to which they were relegated in the North American Free Trade Agreement (NAFTA) into the main body of the document, was of great symbolic significance. Republicans in Congress feared a precedent was being set by the change of position,<sup>124</sup> which was the first time in American trade law history that provisions on the enforcement of labor and environmental rights were placed in the main body of a trade pact.<sup>125</sup> Worse yet, the provisions called for the imposition by one country of "appropriate or commensurate"<sup>126</sup> measures—possibly meaning trade sanctions, but perhaps also including fines or decreases in foreign aid<sup>127</sup>—against the other country if the second country violated its own labor or environmental laws.<sup>128</sup> These measures would follow a decision of a three-person arbitral panel, which would be selected (one member by the United States, one member by Jordan, and the third member by mutual agreement) to rule on any dispute.<sup>129</sup> The President would ultimately decide any measures to be imposed by the United States. Republican opposition was overcome in part by letters from the USTR to the Jordanians in which the USTR stated its intention to not invoke these enforcement procedures in a way that would block trade.<sup>130</sup> The September 11th attacks virtually ensured Republicans would support the FTA, notwithstanding the labor and environmental provisions and their centrality in the text, because they saw Jordan as an ally in counter-terrorism.<sup>131</sup>

119. See Gary G. Yerkey, *U.S., Jordan Make "Substantial" Progress in Talks on Free Trade Agreement*, USTR Says, 17 Int'l Trade Rep. (BNA) No. 31, at 1224 (Aug. 3, 2000).

120. See Yerkey, *U.S. Signs*, *supra* note 108, at 1653.

121. See Gary G. Yerkey, *President Clinton Sends Congress Bill to Implement Jordan Free-Trade Pact with Jordan*, 18 Int'l Trade Rep. (BNA) No. 2, at 80 (Jan. 11, 2001).

122. See Gary G. Yerkey, *Senate Approves Free Trade Pact with Jordan, Clearing Way for Enactment*, 18 Int'l Trade Rep. (BNA) No. 38, at 1533 (Sept. 27, 2001).

123. See Rossella Brevetti, *Senate Panel, House Approve Measure on Jordan FTA, but Gramm Still Dissatisfied*, 18 Int'l Trade Rep. (BNA) No. 31, at 1244 (Aug. 2, 2001).

124. See Brevetti, *Senate Panel, House Approve*, *supra* note 123; Gary G. Yerkey, *House Democrats Hail "Precedent" Set By Labor, Environmental Clauses in Jordan FTA*, 17 Int'l Trade Rep. (BNA) No. 43, at 1685 (Nov. 2, 2000).

125. See Gary G. Yerkey, *USTR Vows to Work for Compromise between GOP, Democrats on Jordan FTA*, 18 Int'l Trade Rep. (BNA) No. 14, at 554 (Apr. 5, 2001).

126. See Rossella Brevetti, *Gramm Vows to Block Jordan FTA Unless Sovereignty Concerns Addressed*, 18 Int'l Trade Rep. (BNA) No. 29, at 1159 (July 19, 2001).

127. See Rossella Brevetti, *Baucus Sees Flexibility in Language on Environment, Labor in Jordan FTA*, 18 Int'l Trade Rep. (BNA) No. 19, at 757 (May 10, 2001).

128. See Yerkey, *Senate Approves*, *supra* note 122.

129. See Yerkey, *U.S. Signs*, *supra* note 108. One senior trade official from the United States indicated the dispute resolution mechanism was more informal than that contained in the DSU or NAFTA, and modeled after the procedures in America's FTA with Israel. See *id.*

130. See Brevetti, *Senate Panel, House Approve*, *supra* note 123, and Yerkey, *Senate Approves*, *supra* note 122.

131. See Yerkey, *Senate Approves*, *supra* note 122.



The history of the Israel-United States FTA is a contrast not lost on Islamic reformists.<sup>132</sup> The Israelis originally proposed a bilateral FTA in 1981. On November 29, 1983, President Reagan and Prime Minister Shamir agreed to commence negotiations, which began in earnest in mid-January 1984. These negotiations were conducted by the USTR pursuant to the Trade and Tariff Act of 1984, wherein Congress delegated authority to the executive branch to enter into the negotiations. Labor and environmental issues did not snag the negotiations, and no provisions on these issues were included in the final text. To be sure, the linkages between trade and labor, and between trade and the environment, were not as politically prominent in the early and mid 1980s as they would become at the turn of the millennium. Still, they could not have been unknown during the negotiations with Israel.

#### E. EIGHT SNUBS?

What has happened in the period since the Jordan FTA entered into force?<sup>133</sup> Arguably, little progress on invitations to Islamic countries has been made. To the contrary, the record of American trade law toward the Islamic world could be characterized, not entirely unfairly, as one of more snubs than invitations.

Consider the following eight points as they might be seen through the eyes of trade officials from Muslim countries.

(1) *No Other FTAs*: The United States has eschewed—consciously or not—commencement of FTA negotiations with other Islamic countries. Egypt is an obvious, commercially significant, and highly strategic candidate. Its political and cultural influence in many parts of the Arab world is enormous. Egypt could be the anchor for a Middle East FTA into which the existing pacts with Israel and Jordan could be folded. Twenty-six Senators have supported these ideas, yet no substantial progress has been made beyond a Trade and Investment Framework Agreement (TIFA) between the United States and Egypt signed in 1999,<sup>134</sup> and an expression of interest by the United States in November 2001 to start talks.<sup>135</sup>

(2) *Lack of Inclusiveness in the WTO membership*: Of the 144 WTO member countries, a rough estimate is that only twenty are Muslim, or about 14 percent of the membership.<sup>136</sup>

132. This history, as well as an explanation of the agreement and the implementing legislation, are set forth in OVERVIEW, *supra* note 111, at 262–64.

133. See generally CATCHING UP WITH THE COMPETITION (Bernard Hoekman & Jamel Zarrouck eds., 2000) (containing economic essays on regional trade integration in the Middle East); TRADE POLICY DEVELOPMENTS IN THE MIDDLE EAST AND NORTH AFRICA (Bernard Hoekman & Hanaa Kheir-El-Din eds., 2000) (containing economic essays on trade and investment in the Middle East).

134. See Gary G. Yerkey, U.S., *Egypt Agree to Seek "Framework" for Eventual Free Trade and Investment*, 18 Int'l Trade Rep. (BNA) No. 14, at 555 (Apr. 5, 2001); Gary G. Yerkey, U.S. *Senators Urge President Clinton to Negotiate Free-Trade Pact with Egypt*, 17 Int'l Trade Rep. (BNA) No. 32, at 1255 (Aug. 10, 2000).

135. See Gary G. Yerkey, U.S. *Wants FTA Talks with Egypt, Links Trade to Global War on Terrorism*, 18 Int'l Trade Rep. (BNA) No. 44, at 1806 (Nov. 8, 2001). The Clinton administration discussed the idea of an FTA with three Maghreb countries, Algeria, Morocco, and Tunisia (but not Libya), and USTR Zoellick also mentioned this possibility on his January 2002 trip in Morocco. The United States has a TIFA with Morocco, and one with Algeria as well (the latter, signed in July 2001, is posted on the USTR's Web site at [www.ustr.gov](http://www.ustr.gov)). See Gary G. Yerkey, USTR Zoellick Plans Travel to Africa, Latin America, and Asia in Coming Weeks, 19 Int'l Trade Rep. (BNA) No. 5, at 177 (Jan. 31, 2002). However, no material progress has been announced on turning this FTA idea into a reality. In addition, Turkey has proposed a preferential trading arrangement with the United States, but again no concrete action appears to have occurred toward realizing this goal. See Gary G. Yerkey, Turkish Leader Proposes Trade Pact with U.S. to Cut Tariffs, Non-Tariff Barriers, 19 Int'l Trade Rep. (BNA) No. 4, at 118 (Jan. 24, 2002).

The Islamic countries that have not acceded yet to the WTO are Afghanistan, Algeria, Azerbaijan, Iran, Iraq, Libya, Saudi Arabia, Syria, Tajikistan, Turkmenistan, Uzbekistan, and Yemen.<sup>137</sup> To be sure, it is important not to stretch this point. It cannot be inferred that Muslims as people, as distinct from sovereign Islamic states, are under-represented. The largest Muslim countries in the world—Indonesia, Pakistan, Bangladesh, Turkey, and Egypt—are members, accounting for 207, 135, 128, 64, and 63 million people,<sup>138</sup> respectively, or nearly 600 million of the 1.2 billion Muslims. Tens of millions more Muslims living in non-Muslim countries like China and India are represented through the membership of those countries. The point is that if the count is by sovereign states, there is reason for concern about inclusiveness, especially given some of the prominent Islamic states—such as Iran, Syria, and Saudi Arabia (all discussed below)—that remain outside the club.

(3) *Blockage of Iranian Accession*: The rise to power of a cautious modernizer in Iran (President Mohammad Khatami) bespeaks the influence of Liberal Reformism in that country, and suggests Iran might be a good candidate for WTO membership. That membership could encourage economic liberalization, and foster trade linkages that re-integrate it into the community of peaceful, prosperous nations. Yet, a strategic opportunity is not how the United States approaches Tehran's interest in the WTO. (To the contrary, Iran is said to be part of an "axis of evil," along with Iraq and North Korea.<sup>139</sup>) To join the WTO, a working party needs to be established to negotiate terms of accession, and the General Council (which operates by consensus) must agree to form the working party.<sup>140</sup> Iran applied to join in 1996. The initial American response was to block the General Council from even considering formation of a working party.<sup>141</sup> In May 2001, the United States agreed to placement of the issue on the agenda. But, on the ground it is reviewing the matter internally, presumably a euphemistic way of stating its suspicion of Iran's support for terrorism, the United States continues to block approval of Iran's request to establish a working party.<sup>142</sup> Supported by Israel, but opposed by the EU, the United States formally blocked Iran's application again in February 2002.<sup>143</sup>

136. I count as "Islamic" those countries with a Muslim population of 66 percent or higher, as set forth in *THE OXFORD HISTORY OF ISLAM* x (John L. Esposito ed., Oxford Univ. Press 1999) (containing a handy map, "The World of Islam – Distribution of World Population"). Accordingly, the Islamic countries included are: Afghanistan; Albania; Algeria; Azerbaijan; Bahrain; Bangladesh; Brunei; Egypt; Gambia; Guinea; Indonesia; Iran; Iraq; Jordan; Kyrgyzstan; Kuwait; Libya; Mali; Mauritania; Morocco; Oman; Pakistan; Qatar; Saudi Arabia; Syria; Tajikistan; Tunisia; Turkey; Turkmenistan; United Arab Emirates; Uzbekistan; and Yemen.

137. In July 2001, the WTO General Council accepted the application for membership from Tajikistan, and established a working party on accession to negotiate membership terms. See Daniel Pruzin, *WTO Accepts membership Applications from Bahamas, Tajikistan; Delays on Iran*, 18 Int'l Trade Rep. (BNA) No. 30, at 1200 (July 26, 2001).

138. See THE WORLD BANK, *WORLD DEVELOPMENT INDICATORS* 2001, Table 1.1, "Size of the Economy," at 12–14 (2002) (1999 data).

139. See *George Bush and the Axis of Evil*, *ECONOMIST*, Feb. 2, 2002, at 13. Of course, the EU disagrees with the characterization. See Judy Dempsey, *Europeans Reject Bush "Axis of Evil" Line on Iran*, *FIN. TIMES*, Feb. 5, 2002, at 4.

140. See Bhala, *Enter the Dragon*, *supra* note 104, at 1471–74.

141. See Daniel Pruzin, *U.S. Blocks Iranian WTO Application; Syria Prevented from Placement on Agenda*, 19 Int'l Trade Rep. (BNA) No. 1, at 36 (Jan. 3, 2002).

142. See Guy Dinmore & Frances Williams, *Iran Signals WTO Hopes*, *FIN. TIMES*, May 9, 2001, at 9; Pruzin, *U.S. Blocks Iranian WTO Application*, *supra* note 141.

143. See Frances Williams, *Iran's Bid to Join WTO is Blocked by U.S.*, *FIN. TIMES*, Feb. 14, 2002, at 5.

(4) *Blockage of Syrian and Libyan Accessions*: The rise to power of a purported modernizer in Syria, President Bashar al-Assad, may be a hopeful sign of influence of Liberal Reformists in that country. So, too, may be Syria's indication in October 2001 that it would like to join the WTO. The United States blocked the General Council from putting on the agenda the question of formation of an accession working party. It appears to have done so because of Syria's support for the Arab League boycott of Israel.<sup>144</sup> The United States has taken the same position on Libya's request for WTO membership—blockage, presumably out of concern for Libya's support for this boycott.<sup>145</sup> In both cases, the American position is at odds with that of the EU, which supports the Syrian and Libyan accession moves. Indeed, the EU is going so far as to negotiate a trade association accord with Syria, which is part of a grander design to create a Europe–Mediterranean FTA by 2010.<sup>146</sup>

(5) *Hesitancy toward the Palestinians*: The United States has told the Palestinian Authority that, given tensions with Israel, it would not be appropriate for the Authority to gain WTO observer status.<sup>147</sup> That status would be an initial step toward possible membership.

(6) *No Real Progress on Saudi Accession*: It is not clear how the debate in Saudi Arabia about the nature and pace of economic reform will play out; and, in particular, whether Traditional Reformism will triumph.<sup>148</sup> The strategic argument for including Saudi Arabia in the WTO is encouragement of Liberal Reformists, or at least Neo-Traditional Reformists, who in turn will protect the oil flowing from one quarter of the world's proven reserves.<sup>149</sup> The Kingdom applied to join the GATT in July 1993, though little progress was made in accession negotiations until the birth of the WTO on January 1, 1995.<sup>150</sup> Since then, talks have bogged down over the terms. On the one hand, the United States (and other developed-country WTO members) wants market access the Saudis appear unwilling to provide, because of a threat to the birth of infant industries that might help wean their economy off of its present dependence on oil, and a fear of an invasion of western culture embedded in imported goods and services that would undermine Islamic values. More than just maintenance of an import ban on alcohol and pork is at stake.<sup>151</sup> In March 2001, the Saudis produced a broad "negative list" of industrial and service sectors that would be off limits to foreign companies: all insurance and reinsurance businesses; telecommunications (public telecom, data and message transmission, and business network services); wholesale trade; retail distribution; auto dealerships and auto parts outlets; road and air transport (passenger and freight); audiovisual businesses (film and video production and distribution, cinemas, radio, and television); printing and publishing; education; nursing and paramedical services; real estate commission businesses; and, of course, oil exploration and production, and pipeline transport.<sup>152</sup> On the other hand, perhaps the United States is chary of what

144. See Daniel Pruzin, *Syria to Seek WTO membership; Objections of U.S., Israel Expected*, 18 Int'l Trade Rep. (BNA) No. 44, at 1806 (Nov. 8, 2001).

145. See Williams, *supra* note 143.

146. *Id.*

147. See Pruzin, *Syria*, *supra* note 144.

148. See Roula Khalaf, *A Wind of Change Must Rise in Riyadh, Says Prince*, FIN. TIMES, Jan. 30, 2002, at 14.

149. See Robin Allen, *Saudis Blame "Unique Status" for Delays in Joining WTO*, FIN. TIMES, June 14, 2000, at 8.

150. See Frances Williams, *Saudis Start Talks on Joining the WTO*, FIN. TIMES, May 3, 1996, at 4.

151. See Daniel Pruzin, *U.S., EU Push Saudis to Improve Market Access Offers for WTO Entry*, 17 Int'l Trade Rep. (BNA) No. 42, at 1654 (Oct. 26, 2000).

152. See Daniel Pruzin, *Trade Officials Express Disappointment with Saudi Foreign Investment Exclusion List*, 18 Int'l Trade Rep. (BNA) No. 11, at 446 (Mar. 15, 2001).

Saudi Arabia could use: oil subject to the disciplines of trade law, including bound tariff schedules, so its exports would not be subject to excessive or discriminatory import barriers.

(7) *Lack of Representation in the WTO Secretariat*: Of the 512.5 actual employees at the WTO Secretariat, few are from Islamic countries. There are three Egyptians, one Moroccan, four Tunisians, and two Turks.<sup>153</sup> In other words, representation among employees in the Secretariat from the Islamic world is about 2 percent. Of course, there may be Muslims from non-Muslim countries (but that is not easy to ascertain from available sources), and the point of working for the Secretariat is not to be a lobbyist for the interests of one's own country. Still, the lack of nationals in the Secretariat from Indonesia, Pakistan, and Bangladesh—the world's three largest Islamic countries—is stunning.

(8) *Sanctions*: It has been suggested America has a sanctions-based foreign policy,<sup>154</sup> though former Senator Jesse Helms has disputed the charge that the United States is sanctions happy.<sup>155</sup> What is difficult to deny is that Islamic countries are frequent targets of America's trade sanctions, particularly those taking aim at state-sponsored terrorism.<sup>156</sup> For example, in August 2001, President Bush agreed to an extension of the Iran and Libya Sanctions Act of 1996 (ILSA), which otherwise would have lapsed pursuant to a sunset clause in that legislation, after both houses of Congress voted for the extension by a veto-proof margin.<sup>157</sup> There is a vigorous and worldwide debate as to the efficacy of isolating regimes in order to bring about a change in them, or their behavior, as opposed to constructively engaging them.<sup>158</sup>

Certainly, whether these eight points are "snubs" is a matter of perspective and context. Doubtless, American trade officials would claim to have made greater efforts at inviting into the family of trading nations the Islamic countries. But, as is the case with developing countries (discussed in Part II), there is the problem of perception and reality merging in a fuzzy way. If one side sees itself being told it is not invited to share in the opportunities from a liberal trade order, then that is a real problem the other side ignores at its peril.

Whatever the accuracy of the perception, the Islam Challenge is critical. Failure to meet it is a second reason for abjuring the characterization of Doha as a "success." Extending Secretary Hull's vision means linking (1) the integration into the trading system of Liberal Reformist, and possibly also Neo-Traditional Reformist, Islamic countries, with (2) the peace and security necessary for that system to operate. That link is not yet a feature of American trade law as it relates to the Islamic world.

#### F. TEXTILES FROM PAKISTAN—A NINTH SNUB?

If there is one illustration that stands above all others as a missed opportunity to enhance peace and stability by trying to integrate Liberal Reformist and (possibly) Neo-Traditional

153. See *Overview of the WTO Secretariat*, *supra* note 57 and *THE OXFORD HISTORY OF ISLAM*, *supra* note 136.

154. See, e.g., Richard N. Haas, *Sanctioning Madness*, 76 *FOREIGN AFF.* 74 (Nov./Dec. 1997). See generally Raj Bhala, *Mrs. WATU: Seven Steps to Trade Sanctions Analysis*, 20 *MICH. J. INT'L L.* 565 (1999) (suggesting a doctrinal framework for the analysis of sanctions legislation).

155. See Jesse Helms, *What Sanctions Epidemic?* 78 *FOREIGN AFF.* (Jan./Feb. 1999).

156. For a discussion of the various sanction regimes and countries affected, see U.S. INT'L TRADE COMMISSION, *OVERVIEW AND ANALYSIS OF CURRENT U.S. UNILATERAL ECONOMIC SANCTIONS*, pub. 3124, investigation 332-391, I-8-11 and Table I-3 at I-12-13 (Aug. 1998).

157. See Gary G. Yerkey, *President Signs Five-Year Extension of ILSA as Businesses Again Protest*, 18 *INT'L TRADE REP. (BNA)* No. 32, at 1276 (Aug. 9, 2001). See generally Raj Bhala, *Fighting Bad Guys with International Trade Law*, 31 *U.C. DAVIS L. REV.* 1, 86-115 (1997) (discussing ILSA).

158. Several of the studies are discussed in Bhala, *Fighting Bad Guys*, *supra* note 157, at 116-21.

Reformist Islamic countries into the multilateral trading system, then surely it comes from the textile and apparel sector. The record of the United States roughly contemporaneously with the Doha Conference is one of hardly budging on market access. That record may redound to the detriment of the United States.

Happily, Uruguay Round negotiators laid down a route—the Agreement on Textiles and Clothing (ATC)—that will soon lead to a world that looks more like free trade than it does now. Under the ATC, the system of quotas enshrined in the Multi-Fibre Agreement (MFA) is being dismantled. All WTO members are obligated to phase out these quotas in stages, with the final elimination on December 31, 2004.<sup>159</sup> But, more than efficiency is at stake, otherwise, rapid eradication of tariff and non-tariff barriers in the textile and apparel sector would have been the result of talks during the previous Round.

Also at stake are the adjustment costs faced by workers in each country that has a textile and apparel sector. Many Islamic countries with textile and apparel industries maintain high trade barriers against competing products.<sup>160</sup> No doubt in the Ricardian world, immediate and mutually beneficial trade concessions would be the efficient outcome. But, as is apparent from GATT, reciprocity is not required of developing and least-developed countries. Part IV of the document embraces the principle of non-reciprocal trade liberalization for the benefit of poor countries. In GATT article XXXVI:8, the developed country contracting parties declare they “do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties.”<sup>161</sup> That is not to say encouraging poor countries to invigorate their industries through exposure to competition is a dumb idea. Rather, it is to say that granting them trade concessions is not contingent on their rapid implementation of the strategy. Indeed, the 1979 Tokyo Round Enabling Clause enshrines a permanent waiver from the MFN obligation of GATT article I,<sup>162</sup> so that rich countries may provide S & D treatment to poor countries—and many, like the United States, do so to one degree or another, and with exceptions of one sort or another.<sup>163</sup>

Indeed, rapid implementation of the strategy—specifically, insisting on swift eradication of most or all of the barriers to textile and apparel imports in countries like Pakistan and Bangladesh may be a dumb idea from the perspective of systemic security and stability.

Textiles and apparel are one of the most economically and socially strategic export sectors in some Islamic countries, with these two countries—discussed in turn below—being examples. In each, these goods represent a sizeable percentage of total exports, and total export earnings, in such countries.

In Pakistan, the textiles and apparel sector accounts for over half of the country's exports,<sup>164</sup> and is an important source of employment for men and women (and, in instances

159. See ATC Agreement, art. 9, reprinted in HANDBOOK, *supra* note 52, at 348, 362.

160. Pakistan, for example, has imposed on imported textiles and clothing unbound tariffs as high as 70 percent. See Chris Rugaber, *European Commission Proposes Benefits, More Market Access for Pakistani Textiles*, 18 Int'l Trade Rep. (BNA) No. 41, at 1651 (Oct. 18, 2001).

161. GATT Article XXXVI:8, reprinted in HANDBOOK, *supra* note 52, at 245.

162. See Decision on “Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries” (28th November 1979), GATT B.I.S.D. (26th Supp.) at 203–05 (1980), reprinted in HANDBOOK, *supra* note 52, at 257–29.

163. See TRADE, GROWTH, AND INJUSTICE, *supra* note 55.

164. Edward Luce & Mark Nicholson, *Pakistan Looks for Better Deal on Textile Exports*, FIN. TIMES, Sept. 29, 2001, at 4.

where additional family income sources are needed, children). Pakistan is rightly proud of its world-class cotton, which it boasts is as fine or better than Egyptian cotton.<sup>165</sup> Earnings generated by families working in the textiles and apparel sector in Muslim societies are linked directly to social stability in those societies and, in turn, to America's national security. Their earnings are one defense they have against succumbing to the temptation of religiously extreme messages, and against unsavory and unlawful jobs like narcotics trafficking and prostitution. The Commerce Minister of Pakistan, Abdul Razak Dawood, put it directly: "If you want Pakistan to be a liberal and modern state you are not going to get that unless you've got people employed . . . Unemployment leads to militancy."<sup>166</sup>

The threat of militancy and the earnings defense against it run from this generation of Pakistani workers to its progeny. Earnings from textile and apparel jobs are used by many lower and middle-class Pakistani families to pay tuition for academically sound private schools for their children, i.e., to avoid a situation in which these families have no choice but to send their kids to an academically sub-standard *madrassa* (religious school).<sup>167</sup> That kind of school is likely to be financed privately (sometimes by interests in Saudi Arabia and the Gulf region), and may well promulgate extremist and anti-American messages to the young and dispossessed.<sup>168</sup>

Obviously, the earnings of families employed in the textile and apparel sector in countries like Pakistan hinge critically on the sales of the products they make, particularly sales overseas to major consuming countries like the United States. Market access to the United States for their work product is a necessary—but by no means sufficient—condition for successfully combating the seductions of extremism, violence, and red-light occupations. Alarming, "[a]s a direct consequence of the political uncertainty caused by the American bombing of Afghanistan, Pakistan's textile industry is losing orders from American companies"<sup>169</sup> and in the eight weeks following September 11, overseas orders fell dramatically, and Pakistani textile companies had laid off 10,000–12,000 workers.<sup>170</sup> In brief, the point is that market access for textile and apparel products from countries like Pakistan is good not only for American consumers (who gain from a broader array of lesser-priced clothes than they would have if living behind protectionist walls), but also for their safety.

To be sure, increased market access for Pakistan means adjustment costs for some Americans—those who work in the textile and apparel sector that produce like or directly competitive products with the imports from countries like Pakistan. Hundreds of thousands of jobs have disappeared from this sector over the last several years, and 90,000 lost between roughly April 2000 and October 2001.<sup>171</sup> Yet, it is a hard utilitarian balancing calculation

165. The observations recorded below are gathered not only from my trip to Pakistan in March 2001, but also from discussions with a number of Pakistani trade lawyers, scholars, and students during the last four years.

166. Luce & Nicholson, *Pakistan Looks*, *supra* note 164.

167. See THOMAS W. LIPPMAN, UNDERSTANDING ISLAM 187 (2nd rev'd ed.1995) (defining "*madrassa*" as a "[r]eligious school, where boys of high-school age study the Koran, Islamic law, and related subjects"). See also JOHN L. ESPOSITO, ISLAM – THE STRAIGHT PATH 220 (expanded ed. 1991) (defining "*madrassa*" as a "religious college or university, seminary").

168. Certainly, not every *madrassa* bears these dubious distinctions.

169. *Open Up to Pakistan*, WASH. POST, Oct. 31, 2001, at A26.

170. See Chris Rugaber, *U.S. Textile Group Condemns Proposals by Administration to Cut Pakistan Tariffs*, 18 Int'l Trade Rep. (BNA) No. 44, at 1792 (Nov. 8, 2001).

171. See Rugaber, *U.S. Textile Group*, *supra* note 170.

of a net benefit in which national security, as well as sectoral economic, factors are weighed. Are many domestic textile and apparel jobs at risk anyway, and have they been so for years, given the slippage of comparative advantage to low-wage countries? Is the risk inevitably going to increase in 2005, when the ATC assures that all import quota restrictions in the textile and apparel sector around the world will be removed, so that there will be a global free market in these products? Is the tariff spike imposed by the United States on Pakistani textiles—15 percent<sup>172</sup>—coupled with an array of quotas a contributing factor to unemployment in Pakistan? What monstrous repercussions might follow from a collapse in Pakistan's textile and apparel sector? In sum, upon whom does it make more sense—from a broad perspective—to impose the adjustment costs?

The current national security context suggests a strong rationale in favor of granting favorable market access to textile and apparel products from Pakistan. There are yet two additional facts that would favor this approach in America's trade law: (1) Pakistan has been a loyal ally in the post-September 11 war against terrorism; and (2) the United States lost a textiles safeguards case to Pakistan in the WTO. Despite these facts, however, the United States has hardly budged on increased market access for textiles and apparel goods from these countries. The veracity and impact of the first fact is obvious, and no elaboration is needed. All that need be underscored is that whatever one might think of the way in which President Pervez Musharraf came to power in the fall 1999, he has risked his and his country's future on siding with the United States against Islamic extremism, and the courage to take these risks ought to merit a significant return.

The second fact concerns one of the less-well known recent cases, *United States—Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan*,<sup>173</sup> initiated by Pakistan in April 2000. The WTO's Dispute Settlement Body adopted the Appellate Body's report in November 2001. The Appellate Body held the United States committed two fatal mistakes in its unilateral imposition of a transitional safeguard action against combed cotton yarn from Pakistan. First, the United States wrongly excluded from the scope of the domestic industry subject to analysis the American combed cotton yarn producers that are vertically integrated and make the yarn for their own internal use. That overly narrow delineation of the domestic industry was a violation of article 6(2) of the ATC.<sup>174</sup> Second, the United States did not examine the effect of imports from Mexico (and possibly other WTO members) individually when coming to the conclusion that serious damage to the domestic

172. See *Open Up*, *supra* note 169. See also Rugaber, *U.S. Textile Group*, *supra* note 170 (reporting an approximate 12 percent tariff on Pakistani textile and apparel imports).

173. WT DS192/AB/R (adopted November 5, 2001). For a brief summary of the case, see *Update of WTO Dispute Settlement Cases*, WT/DS/OV/4, 88–90 (Feb. 6, 2002). For an extended analysis, see Raj Bhala & David Gantz, *WTO Case Review 2001*, 19 ARIZONA J. INT'L & COMP. L. (forthcoming 2002).

174. Article 6:2 states:

Safeguard action may be taken . . . when, on the basis of a determination by a member, it is demonstrated that a particular product is being imported into its territory in such increased quantities as to cause serious damage, or actual threat thereof, to the domestic industry producing like and/or directly competitive products. Serious damage or actual threat thereof must demonstrably be caused by such increased quantities in total imports of that product and not by such other factors as technological changes or changes in consumer preference.

Agreement on Textiles and Clothing, Apr. 15, 1994, Apr. 15, 1994, Makkakesh Agreement Establishing the World Trade Organization, Annex 1A, Multilateral Agreements on Trade in Goods, 33 I.L.M. 81 (1994) [hereinafter ATC], reprinted in *HANDBOOK*, *supra* note 52, at 356 (emphasis added).

industry in the United States could be attributed to Pakistani imports. That defect in the causation analysis was a violation of Article 6(4) of the ATC.<sup>175</sup>

Having received steadfast support in a shooting war, and lost a trade law battle, it would be logical for Pakistan to expect the United States to be willing to open its textile and apparel market to Pakistani goods in more generous ways than called for under the ATC. That is, based on these two facts, the Pakistanis would not be unreasonable to think that they might not have to wait until 2005 for duty-free, quota-free treatment for their exports. As the *Washington Post* proclaimed in an editorial, "If ever there was a case for immediate trade liberalization, American barriers to Pakistani textile exports are it."<sup>176</sup> Indeed, the EU quickly decided to grant Pakistan \$1.35 billion in help by (1) eliminating all tariffs on Pakistani clothing exports (which account for 60 percent of Pakistan's exports to the EU), and (2) increasing the quota allotments by 15 percent for Pakistani textiles and clothing shipped to the EU.<sup>177</sup> Interestingly, Pakistan agreed to reduce its tariffs on EU textiles and clothing by 5 percent, and establish lower binding rates.

Yet, according to the *Wall Street Journal*, here is what happened at Doha on the matter:

[A] U.S. trade official made an offer that he said Pakistan shouldn't refuse.

If Islamabad signed on to the U.S. negotiating line here at the World Trade Organization ministerial meeting, Commerce Undersecretary Grant Aldonis told Pakistan's Commerce Minister that America would consider slightly easing its restrictions on imports of bed sheets and pillowcases from Pakistan. In addition, Mr. Aldonis said, the U.S. also would be willing to lift a 1998 quota on cotton yarn. He also said the U.S. couldn't lower tariffs on Pakistani textiles for fear of angering House Ways and Means Chairman Rep. Bill Thomas (R., Calif.), whose congressional district includes a big cotton manufacturer.

The Pakistani negotiators looked at Mr. Aldonis in astonishment. The WTO already had ruled in April that the U.S. quota on cotton yarn was illegal, so America had to lift it anyway. And bed sheets and pillowcases? Given that Pakistan has lost 40% of its U.S. exports since Sept. 11, when frightened American buyers halted orders from the front-line country, Mr. Aldonis's lowball offer was "totally inexplicable," one Pakistani negotiator said. "We told him, 'Please don't announce this to anyone. It will *insult our intelligence* to pretend this is a concession.'"<sup>178</sup>

Why the insult to the intelligence of the Pakistani trade negotiators? As the account suggests, the answer lies in domestic political pressures, specifically, the perceived need to

175. Article 6:4 states:

Any measure invoked pursuant to . . . this Article shall be applied on a member-by-member basis. The member or members to whom serious damage, or actual threat thereof . . . is attributed, shall be determined on the basis of a sharp and substantial increase in imports, actual or imminent, from such a member or members individually, *and on the basis of the level of imports as compared with imports from other sources*, market share, and import and domestic prices at a comparable stage of commercial transaction; none of these factors, either alone or combined with other factors, can necessarily give decisive guidance. Such safeguard measure shall not be applied to the exports of any member whose exports of the particular product are already under restraint under this Agreement.

*Id.* at Art. 6:4, reprinted in HANDBOOK, *supra* note 52, at 356–57 (emphasis added).

176. *Open Up to Pakistan*, *supra* note 169.

177. See *Open Up to Pakistan*, *supra* note 169; Rugaber, *European Commission*, *supra* note 160; Francesco Guerrera, *Islamabad Rewarded by Brussels Trade Package*, FIN. TIMES, Oct. 17, 2001, at 4.

178. Helene Cooper & Geoff Winestock, *Domestic Demands Limit U.S., EU Bargaining at Trade Talks*, WALL ST. J., Nov. 12, 2001, at A24 (emphasis added).



procure votes in Congress from textile-producing states. The narrow special interest of America's textile and apparel industry has inhibited movement toward a sensible, long-term security strategy on trade concessions in the sector.

What, then, did Pakistan get from the United States? A one billion dollar financial aid package, plus rescheduling of \$379 million of debt, \$300 million in financing and political risk insurance for direct investment in Pakistan (through the Overseas Private Investment Corporation), support for a new loan facility from the International Monetary Fund, and for new development bank facilities (through the World Bank and Asian Development Bank), and a waiver of sanctions imposed after Pakistan tested nuclear devices in 1998.<sup>179</sup> These moves are hardly insignificant. But, the package did not include any significant concessions in the sector about which Pakistan cared most—textiles and apparel.

Pakistan asked for an additional \$1.4 billion in textile and apparel export sales to the United States.<sup>180</sup> The boost in sales, said Pakistan, could be had through suspension of all tariffs on apparel until 2005, and large increases in quotas for key exports (e.g., cotton shirts and trousers). Pakistan got a deal valued at 10 percent of its request—about \$160 million annually. The United States refused to lift any duties. It agreed to raise quota thresholds in seven categories by 15 percent, and to include flexibility for Pakistan to use unfilled quotas in other categories. Not surprisingly, the quotas affected were ones in which Pakistani merchandise is not like or directly competitive with products made in the United States.

#### G. AND TENTH—WHAT ABOUT POOR BANGLADESH?

To sum up so far, there are a number of points in support of an argument that the United States has yet to work out a clear link between better integration of some parts of the Islamic World into the trading system, and the realization of Secretary Hull's vision of trade as an instrument for promoting peace and stability. As discussed earlier, these points are the lack of FTAs with Muslim countries (save for Jordan), eight events that could be perceived as snubs, and what may be characterized as an ungrateful, or at least unenlightened, snub of Pakistan's textile and apparel sector. There is one final illustration of what looks to be a continuing failure of American trade law to meet the Islam Challenge: the asymmetric treatment received by Bangladesh in the ready-made garment (RMG) sector, in comparison with other least-developed countries.<sup>181</sup>

The RMG sector is significant to the Bangladesh economy. It employs about 2 million workers, all non-union, and 80 percent of who are women. The 3,000–3,500 RMG factories

179. Chris Rugaber, *Pakistan to Receive \$1 Billion in Aid; Textile Duty Reductions Not Included*, 18 Int'l Trade Rep. (BNA) No. 45, at 1828 (Nov. 15, 2001).

180. Pakistan's request and the terms of the deal are drawn from Edward Alden, *Pakistan Rewarded with Apparel Market Deal*, FIN. TIMES, Feb. 15, 2002, at 6. See also Edward Alden, *Bush Aid Offer May Dismay Pakistan*, FIN. TIMES, Feb. 14, 2002 (noting strong pressure from the American textile and apparel industry against any sizeable concessions).

181. The observations presented are drawn from my visit to two RMG factories in Dhaka on 8 December 2001, and two meetings, in Washington, D.C. on 14 November 2001 and Dhaka on 2 December 2001, with Mr. Kutubuddin Ahmed, President, Bangladesh Garment Manufacturers and Exporters Association ("BGMEA"). I am grateful to Mr. Ahmed and the BGMEA for the excellent cooperation and instruction they provided to me. Some of the information is drawn from discussions with present and former U.S. government officials familiar with the Bangladesh economy, to who I am grateful. The data set forth above is as of year-end 2001, and any statistical or interpretative errors are mine.

mass-produce apparel for domestic and overseas markets. Regarding the latter, RMGs account for about 75 percent of Bangladesh's exports. Yet, Bangladeshi workers are feeling the pressures of cross-border competition.

On average, for one dozen shirts, wholesale importers from the EU used to pay Bangladeshi RMG exporters U.S. \$5.50. However, more and more capitalists from developing countries—not just within Bangladesh, but also Sri Lanka, Cambodia, and even some Persian Gulf countries—have entered in the RMG business. China is another major producer of RMGs, and about 86 percent of Japan's RMG imports come from China. Thus, the wholesale price offered by EU buyers has fallen to \$3.50 per dozen shirts. At that price, about 60 percent of the Bangladeshi RMG mass-production facilities barely break even, and many others have closed. The closures force many of the redundant workers into prostitution or narcotics trafficking, both monstrous social externalities and potential causes of unrest.

The plummet in world-market wholesale RMG prices obviously is due to severe competition among RMG factories in Bangladesh, and between Bangladeshi and foreign factories. The severity of the competition is not surprising. It is inexpensive to set up an RMG factory. In Bangladesh, it costs about U.S. \$200,000 to set up one and employ 300 workers for an entire year. In contrast, it costs about \$40-\$50 million to establish a textile factory in Bangladesh to produce fabric used to manufacture RMGs. Small wonder why there are so few textile factories there, and why Bangladeshi RMG capitalists import fabric from low-cost suppliers like China and India. In contrast to the Chinese and Indian capitalists, Bangladeshi entrepreneurs lack adequate funding to establish what are called "backward linkages," i.e., to own and control raw material and intermediate good inputs into the RMG production process, and thereby establish a vertically integrated production process.

So, how do the Bangladeshi RMG producers stay in business? First, owners of RMG factories contain labor costs as best they can against pressures from foreign union representatives operating in Bangladesh, and presumably also seek to delay the day when the sector becomes unionized. The result is wage suppression or depression, and only about 10 percent of the roughly 3,000 RMG factories in Bangladesh pay good wages. Costs also are minimized through other, less direct means. For example, hours can be extended beyond the eight-hour per day shift, with a maximum of two hours' overtime, which every factor manager tells a visitor is the limit. Why not twelve hours, or even fourteen hours per day at the same aggregate pay? Clearly, the result is a drop in wages per hour, and an increase in output. Another possibility is to hire cheaper labor—and "cheaper" often means "younger" workers paid a lower wage rate. Yes, it is true that Bangladesh has signed the convention of the International Labor Organization (ILO) against child labor, which Bangladesh authorities have made strides in compliance with the convention, and that, as of October 2001, Bangladesh's RMG factories supposedly were 100 percent free of child labor. Nevertheless, it is easy to spot the large numbers of young women on the streets of Dhaka going to and from their factory jobs.<sup>182</sup>

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182. During *Ramadan* (the Muslim Holy month when the recitations of the Koran to the Prophet Muhammad are said to have begun in 610 A.D., they can be seen coming out of the factories for *Iftar* – the breaking of the daily sunrise-to-sunset fast. Maybe they are not "children," but they are evidently young girls.

Still another cost-cutting possibility concerns working conditions. Lighting, ventilation, sanitation, on-premises health care stations, and training programs distinguish adequate from degrading RMG factories. So, too, do fire alarms and fire escapes. About 80–100 RMG workers died in factory fires over

Another strategy for staying in business in an increasingly competitive global environment is to search for new markets overseas. Here is where American trade law, once again, faces the Islam Challenge. Bangladeshi RMG manufacturers and exporters have benefited from a system of quotas enshrined in the MFA. The MFA quotas ensured their product a certain volume of exports to the EU, the United States, and other major markets. However, with the final elimination of quotas called for by the ATC by December 31, 2004, the next day will be one of global free trade in the textile and apparel sector (absent any remedial actions). Bangladesh's RMG capitalists are nearly unanimous in their trepidation: how can they possibly compete with the likes of low-cost Chinese and Indian producers, absent a country-specific and garment-specific quota system? At least, they say, give them duty-free access to the American (and, presumably, other) markets. After all, as Bangladesh is quick to point out, every one of the WTO members that qualifies as a least-developed country receives duty-free treatment for its RMG exports to the United States—save for RMGs from Bangladesh. In brief, concerned about foreign competition, the Bangladeshi RMG producer-exporters are lobbying the American government for a trade rule regime that will favor their merchandise.<sup>183</sup>

Should Bangladesh be awarded the change? To be sure, there are reasons—from the American perspective—for pause. Consider the irony in what is being asked of the United States. Was it not the case that the MFA quotas were adverse to the interests of many poor countries? After all, the binding quota limits prevented developing countries from increasing significantly their access to developed country markets. The limits motivated some developing-country exporters to concoct illegal trans-shipment schemes whereby, for example, Chinese garments would be routed to the United States through Thailand, and false country-of-origin labels ("Made in Thailand") would be sewn on. (The U.S. Customs Service spent considerable time and effort combating these schemes.) In asking for duty-free treatment, Bangladesh's RMG producer-exporters are arguing for parity, i.e., for treatment that is equal to that given by the United States to all other WTO least-developed members. But, in seeking guaranteed quotas, or even expanded quota thresholds, Bangladesh's RMG capitalists are arguing for a regime that has been viewed by many developing-country advocates as anathema.

In another sense, the concern about foreign competition among Bangladeshi producer-exporters masks structural problems in Bangladesh that, were they addressed, would make Bangladeshi RMGs better able to withstand the competition without compromising the well-being of the labor force. Consider the fact that Bangladesh's principal port, at Chittagong, is among the most expensive in the world. It can take a week to clear a shipment of goods from the port, whereas at Singapore's port the time is a matter of a few hours. On average, the costs of containers, freight, and letter-of-credit financing associated with importing fabric and other items consumed in RMG production are 7 percent of the overall

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a recent three- to four-year period. In these instances, many of the workers were locked in their factories, and thus unable to flee the smoke and flames. Even less inhumane circumstances can pose a threat. The floor space of some factories is congested with raw materials (e.g., rolls of fabric) and cardboard boxes in which finished RMGs are placed for exports. Consequently, ingress and egress is obstructed, and is especially problematic during a fire emergency. The obstructions themselves can be fire hazards.

183. Unfortunately, the lobbying seems to have come late, after Caribbean and Sub-Saharan African exporters had successfully pushed for the Trade and Development Act of 2000.

cost of production of the finished product. A large part of the blame for the high costs has nothing to do with a free trade. Corruption at the Chittagong port is the culprit. Private and public sector officials of various stripes take their "fees," thus driving up production costs. Who suffers? None other than the ladies in the RMG factories, because port corruption puts downward pressure on their wages and working conditions, in order to keep the "bottom line" low.

The irony and the structural problems bespeak weaknesses in the Bangladeshi request to the Bush Administration and Congress. Still another deficiency is that the final salvation of the Bangladesh economy is not likely to come from RMG exports. Even though the RMG sector constitutes 75 percent of Bangladesh's exports, it accounts for only about 25 percent of the country's foreign exchange earnings. Thus, RMGs are not a high-value added product. Plainly, diversification of the country's export base is needed to generate greater amounts of hard-currency income, which can be used to invest in the economy. That diversification has long been underway in China and India. Neither of those countries is staking its economic future on textiles and apparel. Rather, like Korea, Malaysia, Singapore, and Taiwan, both China and India seek to industrialize through the manufacture of progressively higher-value added products. Consumer electronics, computer hardware and software, and pharmaceuticals are examples. That is not to say Chinese and Indian industrialists will abandon entirely the RMG market to their Bangladeshi counterparts, any more than American textile and apparel manufacturers are quietly facing the prospect of the closure of their remaining plants in the United States. However, the RMG sector is likely to diminish in importance in China and India as they progress "up the food chain." In that setting, the Bangladeshi entrepreneurs would be their country's own worst enemy if they focus too much of the energy of their political leaders, and too large an amount of productive resources, on the RMG sector.

Yet, the question about whether Bangladesh ought to be accorded the same preferences that the other least-developed countries remains part of the Islam Challenge for American trade law. Like Pakistan, though of less strategic and political and military importance in the present War on Terrorism, Bangladesh pledged its support for America's efforts and offered what assistance it could.<sup>184</sup> Like Pakistan, Bangladesh has had—and currently has—a woman elected democratically as its leader. Even more so than Pakistan, Bangladesh is dominated—for now, anyway—by political, religious, and social pacesetters opposed to Traditional Reformism. Would, then, a trade law that essentially says "no" to the critical textile and apparel sectors in the world's second and third largest Muslim countries advance the vision articulated by Secretary Hull?

#### IV. Empathy and Humility

But with every problem there is an opportunity. We now have the chance to recast U.S. trade policy in a manner that better prepares it for the challenges of the 21st century and thus puts it on a more sustainable footing with greater public support. We have no choice but to accept that challenge.<sup>185</sup>

184. Among the victims of September 11 were many Bangladeshis, some of whom apparently worked in the former "Windows on the World" restaurant atop the World Trade Center.

185. COUNCIL ON FOREIGN RELATIONS, *FUTURE VISIONS FOR U.S. TRADE POLICY* (1998).

European Commission President Romano Prodi declared the DDA indicated the new negotiating round "would not be one world against another but a shared agreement."<sup>186</sup> Is he right? Two Challenges, Poverty and Islam, reflect two great schisms in global trade—between rich and poor, and Muslim and non-Muslim.<sup>187</sup> If trade law is to liberalize trade, and not be the tool for protectionist abuse, then these schisms must be narrowed. If they are not narrowed, then surely Prodi will be wrong.

To say the dominant trading power must take the lead is not to take a position hostile to American trade law. One motive for being provocative is to spotlight different perspectives, and open up new policy options, in an area of passionate concern to the *agent provocateur*. That is the motive behind this article. If its argument were that American trade policy is a study in failure, then there would be a legitimate counter-attack. That argument would make matters sound far worse than they are. But, if the argument is trade law has not met the two Challenges, which it is, then it might be taken in the spirit in which it is meant—constructive criticism.

Empathy is not agreement. Not every point put forward by every official from a developing or Islamic country about how trade law ought to be changed is correct. There is rhetoric, even whining unmindful of self-inflicted wounds like domestic corruption. More apologies for the Third World are unnecessary. Is it not a fact that of the twenty-four poorest African countries that made economic reforms between 1990–1999, ten of them endured wars and coups,<sup>188</sup> while bureaucracy, graft, and dreaded diseases plagued virtually all of them? There is blame to go around, but pointing fingers is not the hallmark of good lawyers. Rather, empathy is the indispensable quality for effective advocacy in any forum. The WTO is no exception.

Likewise, humility is needed to avoid overstatement. It would be excessive to imply that had the United States met successfully the Poverty and Islam Challenges, all or virtually all of the outstanding substantive trade law issues would have been resolved at Doha. Who can gainsay that there were, and still are, other obstacles in the way? Many WTO members face domestic constituency pressures, coupled with internal government constraints, which conspire against dramatic agreement to new multilateral trade agreements. In the United States, the confederates—sometimes in concert, sometimes not—include many labor unions, environmental lobbyists, human rights groups (including activists for religious freedom), and consumer advocates. Not all of the arguments from these non-governmental actors can be dismissed as simplistic or selfish. And, of course, there are serious threats posed by unresolved disputes among the major trading powers (e.g., the *Foreign Sales Corporation* case, and numerous AD and safeguards cases).<sup>189</sup>

186. Jonquières, *WTO Reaches Agreement*, *supra* note 6.

187. For another treatment of developing country issues and the DDA, and the associated politics of trade liberalization in the United States and Canada see generally Alan S. Alexandroff, *Doha: A Very Small Step for Trade Liberalization* (2002) (manuscript on file with author).

188. See *Not By Their Bootstraps Alone*, *Economist*, May 12, 2001, at 52. For a new study by the Council on Foreign Relations on barriers to trade in the Middle East, and their growth-constraining repercussions, see BERNARD HOEKMAN & PATRICK MESSERLIN, *HARNESSING TRADE FOR DEVELOPMENT AND GROWTH IN THE MIDDLE EAST* (2002). The study is summarized in Amity Shlaes, *Tales from the Heart of the Arab Economies*, *FIN. TIMES*, Feb. 12, 2002, at 15.

189. For a discussion of these cases, see Raj Bhala & David Gantz, *WTO Case Review 2000*, 18 *ARIZONA J. INT'L & COMP. L.* 1 (2001) and *WTO Case Review 2001*, *supra* note 173.

Rather, the point in challenging the conventional wisdom about Doha is that had the two Challenges been addressed, then Doha might well have produced agreements on more substantive points than it did. Indeed, insofar as overlap exists between concerns raised by NGOs, or parts of governments, in some WTO members, and concerns of developing and Islamic countries, there is reason for confidence in this historical counter-factual claim. However, that intriguing overlap is for another article.